

No. 19-56417

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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AL OTRO LADO, INC., *et al.*,  
*Appellees,*  
v.

CHAD WOLF, Acting Secretary of Homeland Security, *et al.*,  
*Appellants.*

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APPEAL FROM DECISION OF THE UNITED STATES DISTRICT  
COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
No. 17-cv-02366-BAS-KSC

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**APPELLEES' SUPPLEMENTAL EXCERPTS OF RECORD IN  
SUPPORT OF OPPOSITION TO MOTION FOR STAY PENDING  
APPEAL**

**VOLUME 5  
PROVISIONALLY FILED UNDER SEAL**

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

Al Otro Lado, Inc., *et al.*,

Plaintiffs,

v.

Chad Wolf, *et al.*,

Defendants.

Case No.: 17-cv-02366-BAS-KSC

**EXPERT REPORT OF STEPHANIE LEUTERT**

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**I. Introduction and Qualifications**

1. My name is Stephanie Leutert. I am the Director of the Central America & Mexico Policy Initiative (“CAMPI”) at the Strauss Center for International Security and Law at the University of Texas. In this role, I lead the development and programming for CAMPI and conduct original research on the U.S.-Mexico border and Central American migration.

2. I previously submitted declarations in connection with the Plaintiffs’ September 26, 2019 motions for provisional class certification and preliminary injunction.<sup>1</sup>

3. I am an expert on the practices of U.S. Customs and Border Protection (“CBP”) officers and supervisors with respect to arriving asylum seekers at ports of entry (“POEs”) on the U.S.-Mexico border from 2016 to the present. I am the lead author of the first-ever border-wide report on the U.S. Customs and Border Protection’s (“CBP’s”) metering policy and the related asylum waitlists in Mexican border cities.

4. I have also led the publication of four subsequent metering updates that document CBP’s practices and the conditions faced by asylum seekers waiting in Mexican border cities.

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<sup>1</sup> ECF Nos. 293-8, 294-5.

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5. In addition to this work, I teach a graduate level course on Mexico’s migration policy at the Lyndon B. Johnson School of Public Affairs at the University of Texas.

6. Through my work at CAMPI, I have directly observed CBP’s implementation of its turn-back policy at ports of entry (“POEs”) on the U.S.-Mexico border. Since October 2018, I have personally conducted fieldwork in eight Mexican border cities<sup>2</sup> where asylum seekers affected by CBP’s metering policy are forced to wait. In these cities, I have spoken directly with affected asylum seekers, along with migrant shelter staff, members of civil society organizations, and Mexican federal and local government officials. I have interviewed affected asylum seekers who were waiting on international bridges, affected asylum seekers who were sleeping in encampments near the international bridges, and affected asylum seekers waiting in migrant shelters. I have watched firsthand as asylum seekers arrived at the United States - Mexico international line and were turned back by CBP officers. I have seen copies of asylum waitlists in six Mexican border cities<sup>3</sup> and

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<sup>2</sup> Those cities are Matamoros, Tamaulipas; Nuevo Progreso, Tamaulipas; Reynosa, Tamaulipas; Ciudad Miguel Alemán, Tamaulipas; Nuevo Laredo, Tamaulipas; Piedras Negras, Coahuila; Ciudad Acuña, Coahuila; Nogales, Sonora.

<sup>3</sup> Those cities are Matamoros, Tamaulipas; Nuevo Progreso, Tamaulipas; Reynosa, Tamaulipas; Piedras Negras, Coahuila; Ciudad Acuña, Coahuila; Ciudad Juárez, Chihuahua.

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have spoken to eight individuals in charge of running these lists.<sup>4</sup> I have also partnered with colleagues who conducted similar fieldwork in five additional Mexican border cities.<sup>5</sup>

7. A copy of my current curriculum vitae, which includes a list of all publications that I have authored in the prior 10 years, is attached as **Exhibit A** to this report.

8. My typical consulting rate is \$300 an hour. I have elected to waive that fee in this case and will receive no compensation for my work in this litigation.

9. I understand from Plaintiffs’ counsel that I have been retained to offer opinions on issues related to class certification in this litigation. This report contains a complete statement of all of my opinions related to class certification and reasons for them. It also contains all of the exhibits that will be used to summarize or support those opinions. I understand that some depositions and document productions will occur after my report is submitted. I reserve the right to amend and revise this report and the exhibits to it if I should be made aware of information relevant to my

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<sup>4</sup> These list managers were in the cities of Matamoros, Tamaulipas; Nuevo Progreso, Tamaulipas; Reynosa, Tamaulipas; Ciudad Miguel Alemán, Tamaulipas; Nuevo Laredo, Tamaulipas; Piedras Negras, Coahuila; and Ciudad Acuña, Coahuila (two list managers: individuals and families).

<sup>5</sup> Those cities are Ciudad Juárez, Chihuahua; Agua Prieta, Sonora; San Luís Rio Colorado, Sonora; Mexicali, Baja California; and Tijuana, Baja California.

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opinions.<sup>6</sup>

**II. Materials Considered**

10. I considered the following facts and data when forming the opinions expressed in this report.

11. Since December 2018, CAMPI has published regular reports on CBP’s metering practices and the conditions for asylum seekers in Mexican border cities (the “Reports”). These reports include: (a) *Asylum Processing and Waitlists at the U.S.-Mexico Border* (December 2018), (b) *Metering Update* (February 2019), (c) *Metering Update* (May 2019), (d) *Metering Update* (August 2019), (e) *Metering Update* (November 2019).

12. The Reports are based on information that I, other members of CAMPI, and colleagues from the University of California San Diego and the Migration Policy Centre, have collected directly from field and phone interviews and direct observation on visits to Mexican border cities. These Reports are cited throughout this report.

13. This expert report also references documents produced by the defendants in this litigation during discovery.<sup>7</sup> I considered over 1,500 documents

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<sup>6</sup> This is the only case in which I have testified in the previous four years as an expert at trial or by deposition.

<sup>7</sup> I understand from plaintiffs’ counsel that the current defendants in this litigation

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that were produced by the defendants in this litigation when forming my opinions in this case. These documents were provided to me at my request by Plaintiffs’ counsel. Plaintiffs’ counsel did not refuse to produce any documents or data that I requested.

14. In particular, to form the opinions expressed in this report and the reasons for them, I considered CBP’s Southwest Border Daily Operations Reports, Migrant Action Crisis Team (“MCAT”) Daily Reports, Queue Management Reports, and Admissibility Reports from CBP’s San Diego Field Office. All of these documents provided information regarding the number of individuals being held in CBP custody at POEs. The MCAT Daily Reports and the Queue Management Reports also documented the available capacity at each port of entry.<sup>8</sup>

15. Additionally, I considered CBP’s Mass Migration Contingency Plans for the Laredo and San Diego Field Offices, CBP emails regarding port of entry capacity and its metering policy, and other internal CBP memos.

16. When forming the opinions and analysis disclosed in this report, I also

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are Chad Wolf, Acting Secretary of Homeland Security; Mark A. Morgan, Acting Commissioner of U.S. Customs and Border Protection; and Todd C. Owen, Executive Assistant Commissioner of the Office of Field Operations of U.S. Customs and Border Protection.

<sup>8</sup> There were inconsistencies across the data, with different numbers being reported for the same day across the MCAT Daily Reports and the Queue Management Reports. However, both sources reported similar overall port capacity numbers and followed the same general trends. Given these differences, each type of material was treated separately and there were no efforts to combine them.

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considered the transcripts of depositions of CBP officers and officials that have been taken in this litigation. I understand from Plaintiffs’ counsel that one deposition has been taken by Plaintiffs thus far in this litigation.

17. When forming the opinions expressed in this report, I also considered various open-source materials, including newspaper articles, reports from non-governmental organizations, and published legal documents. I did not accept the truth of these documents uncritically. Rather, I used my experience and observations on the ground to determine whether these open source materials were accurate.

18. Finally, when forming the opinions in this report and the reasons for them, I relied upon my direct observation of how the turn back policy is implemented at the U.S.-Mexico border.

**III. Methodology**

19. This expert report builds on fieldwork and research that I have conducted across the U.S.-Mexico border, both alone and in close collaboration with other researchers who also document turn-backs at POEs on the U.S.-Mexico border. During this fieldwork, I engaged in original data collection and relied on semi-structured interviews, observations, and a review of primary source materials. The opinions expressed in this report draw on recognized standards from the disciplines of political science and public policy. The findings from this fieldwork have been recognized and used in official publications by Mexico’s Secretary of Foreign

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Relations and the Inter-American Human Rights Commission.

20. Specifically, the opinions listed in this report are based on the following methods and techniques. First, I received questions from Plaintiffs’ counsel that I was told to address. Second, I formed preliminary opinions regarding these questions based on my published fieldworks and research. Third, I analyzed documents and data produced in this litigation, depositions, and open source materials from the time period 2016 to the present to confirm the accuracy of my preliminary opinions.

21. In the course of forming my opinions, I analyzed MCAT Daily Reports and Queue Management Reports produced by the defendants in this case. These reports include daily custody and capacity numbers, which I compiled into an excel spreadsheet for further analysis. The results from this analysis are included in the report and in the Appendix to this report.<sup>9</sup>

#### **IV. Summary of Opinions**

22. Plaintiffs’ counsel have asked me to address whether, between 2016 and the present, the United States government engaged in a systemic practice of denying non-citizens access to the asylum process at ports of entry on the U.S.-Mexico border.<sup>10</sup>

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<sup>9</sup> I also understand that a copy of the work papers that I used to complete these analyses will be turned over to the defendants along with this report.

<sup>10</sup> I have only been asked to opine on turn-backs as described in Second Amended

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23. Based on my analysis to date, I have reached the following opinions:
- a. Beginning in 2016, U.S. Customs and Border Protection (“CBP”) adopted a policy and practice of turning back asylum seekers that were arriving at ports of entry on the U.S.-Mexico border. Initially, turn-backs occurred at the San Ysidro port of entry, amid an increase in the number of Haitian and other asylum seekers.
  - b. Between 2016 and April 2018, turn-backs were observed at numerous ports of entry on the U.S.-Mexico border, including in San Ysidro, Tecate, El Paso, Eagle Pass, Laredo, McAllen, and Brownsville.
  - c. On April 27, 2018, CBP adopted a written “metering” policy that was distributed to all ports of entry on the U.S.-Mexico border. This policy states that the four directors of field operations on the U.S.-Mexico border may decide to meter the flow of asylum seekers processed and inspected at ports of entry on the U.S.-Mexico border. When engaging in metering, CBP officers were instructed to “inform the travelers that processing at the port of entry [was] currently at capacity and CBP is permitting travelers to enter the

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Complaint. I offer no opinion on other U.S. government policies toward asylum seekers, such as the Migrant Protection Protocols or the regulations purporting to ban asylum for those who entered the United States without inspection or transited through a third country en route to the United States.

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port once there is sufficient space and resources to process them.”<sup>11</sup> This policy was disseminated to CBP officers at POEs via written and oral musters and standard operating procedures.<sup>12</sup>

d. Since April 27, 2018, all ports of entry on the U.S.-Mexico border that accept pedestrian traffic have engaged in turn-backs or metering. This turn back policy has three prongs. First, the U.S. government has encouraged asylum seekers to arrive at POEs on the U.S.-Mexico border instead of entering the United States without inspection between POEs. Second, some smaller POEs redirected asylum seekers to larger POEs despite the fact that these smaller POEs were able to process and inspect asylum seekers. Third, larger POEs engaged in metering—i.e., turning arriving asylum seekers back to Mexico citing capacity constraints.

e. I understand from prior filings in this case that the defendants argue that there may be “legitimate factors” that caused CBP to engage in turn-backs.<sup>13</sup> More specifically, the defendants argue that the capacity of a POE is not knowable because it varies on a day-to-day basis based on several

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<sup>11</sup> ECF No. 283-1 (hereinafter, “Metering Policy”).

<sup>12</sup> Gibbons, Deposition, November 21, 2019.

<sup>13</sup> ECF No. 308 at 19.

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factors.<sup>14</sup> Due to these factors, defendants assert that there is no common method for determining whether the capacity utilization of a port of entry justified turning asylum seekers back to Mexico.<sup>15</sup> This is not the case.

f. Tracking the capacity utilization and daily capacities of POEs was operationally important to CBP.<sup>16</sup> In daily MCAT and Queue Management reports, CBP tracked factors including the capacity utilization of POEs, whether the number of arriving asylum seekers was affecting port operations, and how many people were waiting to be processed at the port. Compiling and analyzing these reports provides a common method for analyzing whether the capacity of a POE might justify turning back asylum seekers.<sup>17</sup>

g. Furthermore, ports of entry and CBP field offices create contingency plans that explain in detail how POEs can temporarily increase their capacity in response to an increased number of asylum seekers.

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<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

<sup>16</sup> Gibbons, Deposition, November 21, 2019.

<sup>17</sup> I understand from Plaintiffs’ counsel that they argue that every turn-back of an asylum seeker at a port of entry on the U.S.-Mexico border is illegal regardless of whether it is justified by the capacity utilization of a port of entry. I express no opinion on this legal theory.

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Comparing these contingency plans to the actual operation of POEs documented in MCAT and Queue Management reports offers a common method for determining whether POEs utilized the capacity available to them under these contingency plans when faced with increased migration numbers.

h. When analyzed using this common methodology, the defendants’ justifications of capacity are less convincing. From 2016 to 2019, most ports of entry consistently reported that they were below capacity. Further still, some ports of entry reported being consistently below 50 percent capacity. Similarly, smaller ports of entry also redirected asylum seekers to larger ports, including when they had the capacity to accept and process arriving asylum seekers. According to CBP’s own analysis of the Queue Management data, 80 percent of the times when these ports of entry were redirecting asylum seekers, their facilities were completely empty (June 20, 2018 through November 8, 2018).<sup>18</sup> Finally, despite putting in place metering practices in ports of entry along the entire U.S. border, it does not appear that any port of entry activated a contingency plan related to the arrival of large numbers of asylum seekers.<sup>19</sup>

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<sup>18</sup> AOL-DEF-00210504.

<sup>19</sup> There is at least one example of OFO working with Border Patrol to process a large number of asylum seekers that ran through the port’s vehicle lanes. However,

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24. This report will cover the first incidents of metering in 2016, the policy’s evolution over the past four years, and how it relates to CBP’s capacity levels at ports of entry. Overall, this report will seek to illustrate how the metering policy has systematically denied non-citizens access to the asylum process when they arrive to the border. Those subjected to metering are often denied access to the asylum process for months, and, for a smaller subset of asylum seekers, metering has resulted in permanent denial.

**V. Reasons for Opinions****A. Key Terminology**

25. This report references several terms that are endemic to the U.S.-Mexico border. Below I define those terms.

26. “OFO” refers to CBP’s Office of Field Operations, the organization that is directly responsible for the operations of ports of entry.

27. “Class A” POEs are ports of entry that are designated to “process all aliens applying for admission into the United States,” including asylum seekers that arrive on foot.<sup>20</sup>

28. “Limit line” positions are located at or near the boundary line between

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this does not appear to represent the activation of a contingency plan. AOL-DEF-00088390.

<sup>20</sup> See [https://www.cbp.gov/sites/default/files/documents/Vol\\_49\\_No\\_50\\_Title.pdf](https://www.cbp.gov/sites/default/files/documents/Vol_49_No_50_Title.pdf).

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the United States and Mexico. CBP officers stationed at the limit line are tasked with screening arriving pedestrian’s travel documents before they can enter U.S. territory.<sup>21</sup>

29. “Control stations” are the physical access controls located at the limit line.

30. “Redirecting” is the practice of intercepting asylum seekers at a port’s limit line position and instructing them to go to another port to apply for asylum.

31. “Circumventors” are individuals, frequently asylum seekers, that enter U.S. territory through the vehicle lanes, instead of through the established pedestrian walkways.

**B. Ports of Entry**

32. Along the U.S.-Mexico border, each U.S. port of entry has a different architectural design but follows the same general layout. For the portion of the U.S.-Mexico border that is delineated by the Rio Grande river (from Brownsville to El Paso), U.S. ports of entry are located at the north end of an international bridge. The

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<sup>21</sup> The limit line position is not always located on the exact U.S.-Mexico border. For example, the limit line in Tecate is located roughly 10 feet into U.S. territory. “Investigation of Alleged Violations of immigration Laws at the Tecate, California, Port of Entry by U.S. Customs and Border Protection Personnel, U.S. Department of Homeland Security, Office of the Inspector General, September 26, 2019, [https://www.oig.dhs.gov/sites/default/files/assets/2019-10/OIG-19-65-Sep19\\_0.pdf](https://www.oig.dhs.gov/sites/default/files/assets/2019-10/OIG-19-65-Sep19_0.pdf).

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U.S.-Mexico border is located at the midpoint of the Rio Grande, generally marked by a commemorative plaque on the bridge. By contrast, ports of entry that are located along land portions of the U.S.-Mexico border often place turnstiles at or near the actual border line, marking the entry into U.S. territory.

33. At Class A POEs—the POES that allow for pedestrian traffic—non-asylum-seekers move freely across the U.S.-Mexico international dividing line and into the United States, either by walking across the bridge midpoints or by passing through a turnstile. These pedestrians then enter the port of entry’s arrival hall, where they encounter a CBP officer at one of several desks. The CBP officer reviews their travel documents—a process known as “primary inspection”—and may admit the pedestrian into the United States or send the pedestrian to secondary inspection for further review.

34. POEs are staffed by CBP officers and supervisors, including Port Directors, Assistant Port Directors, and first and second-level supervisors.<sup>22</sup> Larger POEs also have Admissibility Enforcement Units, or AEUs, that are designed to hold non-citizens requiring additional processing for a short period of time. Some POEs also have Criminal Enforcement Units, or CEUs, that investigate cases of

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<sup>22</sup> Gibbons, Deposition, November 21, 2019.

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trafficking and the use of fraudulent entry documents.<sup>23</sup>

35. Front-line CBP officers work in shifts at a POE.<sup>24</sup> These officers are assigned to duty stations, including at primary inspection, secondary inspection, and at “limit line” positions at or near the boundary line between the United States and Mexico.<sup>25</sup> From time to time, these officers receive written or oral instructions on how to execute their jobs, known as “musters” or “standard operating procedures.”<sup>26</sup>

36. Prior to CBP’s use of turn-backs or metering, asylum seekers approaching CBP’s ports of entry would pass into U.S. territory, walk into the POE’s arrival hall, approach a CBP officer at one of their desks, and request asylum. CBP officers would then send these asylum seekers to the secondary inspection area, where they would then be processed.<sup>27</sup>

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<sup>23</sup> Gibbons, Deposition, November 21, 2019.

<sup>24</sup> Gibbons, Deposition, November 21, 2019.

<sup>25</sup> Gibbons, Deposition, November 21, 2019.

<sup>26</sup> Gibbons, Deposition, November 21, 2019.

<sup>27</sup> OFO processes an asylum seeker by entering them into expedited removal proceedings, after the asylum seeker has been found inadmissible and has claimed credible fear. OFO takes a sworn statement regarding the fear that the asylum seeker has of returning to his or her home country and then refers the person for an interview to UCSIS. This is different than being “inspected”, which is OFO’s process for determining the nationality and identity of an individual, along with their admissibility based on the requirements of U.S. immigration law.

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37. There is one deviation from this general processing procedure. By March 2016, CBP officers in the San Ysidro port in San Diego had created a separate line for asylum seekers, who had to wait in the line until it was their turn to be processed.<sup>28</sup> This dual line structure would soon become part of the San Diego port of entry’s first metering system.

**C. Initial Metering Practices**

38. On May 26, 2016, CBP implemented the first iteration of its metering system in the San Ysidro Port of Entry in San Diego. On this date, CBP reported that its facility was at capacity amid an increase in the number of Haitians and other asylum seekers arriving at the port of entry. At the time, local news outlets reported that there were more than 200 asylum seekers waiting in line inside U.S. territory in the port of entry’s pedestrian entrance and another dozen on the Mexican side of the turnstile.<sup>29</sup> In response, CBP officers worked with their counterparts at the National Migration Institute (*Instituto Nacional de Migración*, INM) to take the waiting

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<sup>28</sup> “Re: Denial of Food to Asylum Seekers Awaiting Processing at San Ysidro Port of Entry,” American Civil Liberties Union, March 23, 2016, <https://www.aclusandiego.org/wp-content/uploads/2016/03/2016-03-23-Ltr-re-Denial-of-Food-at-SYS-POE-FINAL.pdf>.

<sup>29</sup> Sandra Dibble, “Surge of Haitians at San Ysidro Port of Entry,” *The San Diego Union Tribune*, May 26, 2016, <https://www.sandiegouniontribune.com/news/border-baja-california/sdut-haitians-flood-san-ysidro-port-entry-2016may26-story.html>.

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asylum seekers to Tijuana migrant shelters. Asylum seekers were told to return at a certain time for appointments.

39. In the following months, CBP officers continued this process and began streamlining the system. First CBP undertook measures to ensure that asylum seekers stayed in Mexico while they waited. On June 27, 2016, the San Ysidro Port of Entry watch commander wrote in an email “It’s even more important that when traffic is free flowing that the limit line officers ask for and check documents to ensure that groups that may be seeking asylum are directed to remain in the waiting area on the Mexican side.”<sup>30</sup> Second, CBP also outlined and formalized its metering procedures. A document issued after July 2016 notes that “In coordination with the GoM [Government of Mexico] we have identified two (2) periods throughout the day to intake asylum claims into our custody (8am and 4 pm). At each period, we intake approximately [redacted] applicants, with a daily intake total of approximately [redacted] applicants. If an applicant does not meet these intake time periods, they are requested to remain in-line in Mexico until the next intake period.”<sup>31</sup>

40. As CBP officers in San Diego implemented this first metering system,

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<sup>30</sup> CBPALORT000114.

<sup>31</sup> CBPALORT000103 to 106.

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individuals arriving at the San Ysidro and Otay Mesa ports of entry began to report being turned back to Mexico. At the Ped-West crossing—a pedestrian crossing for northbound travelers in the San Ysidro port of entry—asylum seekers were told that they had to speak with Mexican immigration officials before their asylum claims could be processed in the United States.<sup>32</sup> In July 2016, the American Immigration Council documented the case of a Mexican man being returned to Tijuana, and the following month another three teenage Guatemalans and a 21 year old Guatemalan man were also turned back.<sup>33</sup>

41. The San Diego metering system soon spread across the border. It first spread to nearby cities, such as Calexico (in the San Diego sector) and Nogales (in the Tucson sector), where metering systems were put in place after the arrival of a large number of Haitian asylum seekers in a short period of time. In September 2016, large numbers of Haitians arrived in Mexicali (across the border from Calexico) and Grupo Beta, the humanitarian agency inside Mexico’s National Migration Institute, began organizing a list for the waiting Haitians as well as providing them with dates

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<sup>32</sup> “Re: U.S. Customs and Border Protection’s Systemic Denial of Entry to Asylum Seekers at Ports of Entry on U.S.-Mexico Border, American Immigration Council, January 13, 2017, [https://www.americanimmigrationcouncil.org/sites/default/files/general\\_litigation/cbp\\_systemic\\_denial\\_of\\_entry\\_to\\_asylum\\_seekers\\_advocacy\\_document.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/cbp_systemic_denial_of_entry_to_asylum_seekers_advocacy_document.pdf).

<sup>33</sup> Ibid.

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for when they should show up at the U.S. port of entry.<sup>34</sup> By October 19, 2016, a line of Haitian asylum seekers was also waiting at the Nogales port of entry. In Nogales, Sonora (across the border from Nogales, Arizona), the municipal government created a waitlist for the asylum seekers.<sup>35</sup> Yet, by December 2016 the list had dissolved, as CBP officers processed the waiting Haitians in the city and stopped metering.

42. Around the same time, metering also expanded to the other end of the border. It first spread to the Laredo sector, which was experiencing an increase in the number of Cubans arriving to Nuevo Laredo in the final months of 2016.<sup>36</sup> On November 12, 2016, the Assistant Director of Field Operations for the Laredo Field Office wrote an email to all Laredo sector port directors,<sup>37</sup> asking them to meet with

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<sup>34</sup> “Asylum Processing and Waitlists at the U.S.-Mexico Border,” Strauss Center for International Security and Law, Center for U.S.-Mexican Studies, & Migration Policy Centre, December 2018, [https://www.strausscenter.org/images/strauss/18-19/MSI/AsylumReport\\_190308.pdf](https://www.strausscenter.org/images/strauss/18-19/MSI/AsylumReport_190308.pdf); “Mexicans Respond To Haitians, Africans With Unusual Hospitality,” September 22, 2016, [https://www.youtube.com/watch?v=UzaCrd8R\\_LA](https://www.youtube.com/watch?v=UzaCrd8R_LA).

<sup>35</sup> Curt Prendergast, “Haitians hoping for US asylum gather at Nogales border crossing,” *Arizona Daily Star*, October 26, 2016 [https://tucson.com/news/local/border/haitians-hoping-for-us-asylum-gather-at-nogales-border-crossing/article\\_7c401363-f48e-540b-9cf8-4390b1ce7b55.html](https://tucson.com/news/local/border/haitians-hoping-for-us-asylum-gather-at-nogales-border-crossing/article_7c401363-f48e-540b-9cf8-4390b1ce7b55.html).

<sup>36</sup> “Southwest Border Inadmissibles by Field Office FY2017,” U.S. Customs and Border Protection, accessed December 6, 2019, <https://www.cbp.gov/newsroom/stats/ofo-sw-border-inadmissibles-fy2017>.

<sup>37</sup> This includes port directors in Brownsville, Del Rio, Eagle Pass, Hidalgo, Laredo,

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their INM counterparts and request that INM “control the flow of aliens to the port of entry.”<sup>38</sup> It added that “if INM cannot or will not control the flow, your staff is to provide the alien with a piece of paper identifying a date and time for an appointment and return then [sic] to Mexico. This is similar to what San Diego is doing.”<sup>39</sup> This was followed up by additional internal CBP emails discussing this metering guidance. For example, on November 22, 2016, an internal email noted that the instructions from the Laredo Field Office is that “we will only accept ‘what we can handle/process. All others will be turned back to Mexico with an appointment date/time if possible.’”<sup>40</sup>

43. Soon after these emails circulated in CBP, there was an increase in the number of reported turn-backs in the Laredo sector. On November 24, 2016, a Salvadoran woman and her three year old son reported that they were turned back at the Hidalgo port of entry,<sup>41</sup> while on November 30, 2016, a Honduran woman and

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Progreso, Rio Grande, and Roma.

<sup>38</sup> CBPALORT000034.

<sup>39</sup> CBPALORT000034.

<sup>40</sup> CBPALORT000017.

<sup>41</sup> “Re: U.S. Customs and Border Protection’s Systemic Denial of Entry to Asylum Seekers at Ports of Entry on U.S.-Mexico Border, American Immigration Council, January 13, 2017, [https://www.americanimmigrationcouncil.org/sites/default/files/general\\_litigation/](https://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/)

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her four year old daughter reported that they were turned back in Laredo.<sup>42</sup> Additional turn-back reports also began to emerge around this time, including in the El Paso sector on November 20, 2016, expanding the practice of turn-backs into all four Customs and Border Protection sectors.<sup>43</sup> A September 2019 DHS Office of the Inspector General (OIG) Report also notes an interview in which a witness stated that CBP’s turn-backs of asylum seekers began in Tecate (in the San Diego sector) in 2016.<sup>44</sup> However, the OIG did not discover any documentation of turn-backs at Tecate until February 2017. None of the asylum seekers turned back from these ports of entry were provided with appointments.

44. During these initial turn-backs, asylum seekers arriving at U.S. ports of entry would generally cross into U.S. territory before CBP officers told them that they had to return to Mexico. According to turned back asylum seekers’ testimony, they were generally intercepted by CBP officers while already walking on the U.S.

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cbp systemic denial of entry to asylum seekers advocacy document.pdf.

<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

<sup>44</sup> “Investigation of Alleged Violations of immigration Laws at the Tecate, California, Port of Entry by U.S. Customs and Border Protection Personnel, U.S. Department of Homeland Security, Office of the Inspector General, September 26, 2019, [https://www.oig.dhs.gov/sites/default/files/assets/2019-10/OIG-19-65-Sep19\\_0.pdf](https://www.oig.dhs.gov/sites/default/files/assets/2019-10/OIG-19-65-Sep19_0.pdf).

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side of the bridge or sent back to Mexico after approaching CBP officers at their desks in the port of entry’s main hall. In December 2016, large groups of Cubans arrived to the Brownsville and Hidalgo ports of entry and spent several days waiting on or near the bridge before CBP processed the groups. Photos and video footage show the Cubans entering and lining up in U.S. territory on the Hidalgo international bridge.<sup>45</sup> A review of some of the first publicly recorded turn-backs confirms these initial locations.

**Table 1: Data and Location of First Publicly Recorded Turn-back (by Port of Entry)**

Cities	Date of First Publicly Recorded Turn-back	Location of Turn-back
San Ysidro	July 11, 2016 <sup>46</sup>	POE Entry Hall

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<sup>45</sup> Daniela Reyes, “Más de 50 cubanos se encuentran varados en el puente de Reynosa,” *Cuba en Miami*, December 5, 2016, <https://www.cubaenmiami.com/mas-de-50-cubanos-se-encuentran-varados-en-el-puente-de-reynosa/>; Marco Rodríguez, “Logran acceder a territorio estadounidense cubanos varados en Matamoros,” *Hoy Tamaulipas*, December 14, 2016, <https://www.hoytamaulipas.net/notas/273750/Logran-acceder-a-territorio-estadounidense-cubanos-varados-en-Matamoros.html>. “Cubanos están ‘atrapados’ en el Puente Reynosa-Hidalgo,” *Posta*, December 5, 2016, <https://www.posta.com.mx/tamaulipas/cubanos-estan-atrapados-en-el-puente-reynosa-hidalgo>.

<sup>46</sup> There were prior accusations of Mexican asylum seekers being returned to Mexico. However, this appears to be a separate issue from CBP metering. “Re: U.S. Customs and Border Protection’s Systemic Denial of Entry to Asylum Seekers at Ports of Entry on U.S.-Mexico Border, American Immigration Council, January 13, 2017, [https://www.americanimmigrationcouncil.org/sites/default/files/general\\_litigation/cbp\\_systemic\\_denial\\_of\\_entry\\_to\\_asylum\\_seekers\\_advocacy\\_document.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/cbp_systemic_denial_of_entry_to_asylum_seekers_advocacy_document.pdf).

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El Paso	November 20, 2016 <sup>47</sup>	U.S. side of the International Bridge
Hidalgo	November 24, 2016 <sup>48</sup>	POE Entry Hall
Otay Mesa	February 2017 <sup>49</sup>	U.S. territory
Hidalgo	March 2017 <sup>50</sup>	POE Entry Hall

45. The turn-backs were often paired with language explaining why the individual was not going to be allowed to seek asylum into the United States. These explanations were not standardized and included descriptions such as “We’re not accepting any more people”<sup>51</sup> and “[CBP wasn’t] receiving people from Honduras.”<sup>52</sup> Despite turn-backs occurring now across the length of the U.S.-Mexico border, CBP officials were not using a uniform explanation for why they were taking

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<sup>47</sup> Ibid.

<sup>48</sup> Ibid.

<sup>49</sup> “Crossing the Line: U.S. Border Agents Illegally Reject Asylum Seekers,” Human Rights First, May 2017, <https://www.humanrightsfirst.org/sites/default/files/hrf-crossing-the-line-report.pdf>.

<sup>50</sup> Ibid.

<sup>51</sup> “Re: U.S. Customs and Border Protection’s Systemic Denial of Entry to Asylum Seekers at Ports of Entry on U.S.-Mexico Border, American Immigration Council, January 13, 2017, [https://www.americanimmigrationcouncil.org/sites/default/files/general\\_litigation/cbp\\_systemic\\_denial\\_of\\_entry\\_to\\_asylum\\_seekers\\_advocacy\\_document.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/cbp_systemic_denial_of_entry_to_asylum_seekers_advocacy_document.pdf).

<sup>52</sup> Ibid.

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place.

46. On January 13, 2017, a memorandum from the Laredo Field Office formalized the sector’s metering policy, stating that officers could conduct metering “at the middle of the bridge” and that “all foreign nationals seeking a benefit are given an appointment window to return for processing.”<sup>53</sup> However, no appointments were ever provided to arriving asylum seekers and it does not appear that CBP officers were regularly stationed at the middle of the bridge. Rather, some asylum seekers continued to be turned back to Mexico after entering the United States throughout 2017 and through the early part of 2018.<sup>54</sup> These turn-backs continued in spite of CBP experiencing “historic lows in illegal immigration,” according to a May 19, 2017 CBP Memorandum.<sup>55</sup> CBP’s publicly available statistics on apprehensions and inadmissibles also reflect the fewer migrants and asylum seekers arriving to the U.S.-Mexico border during this period of continued

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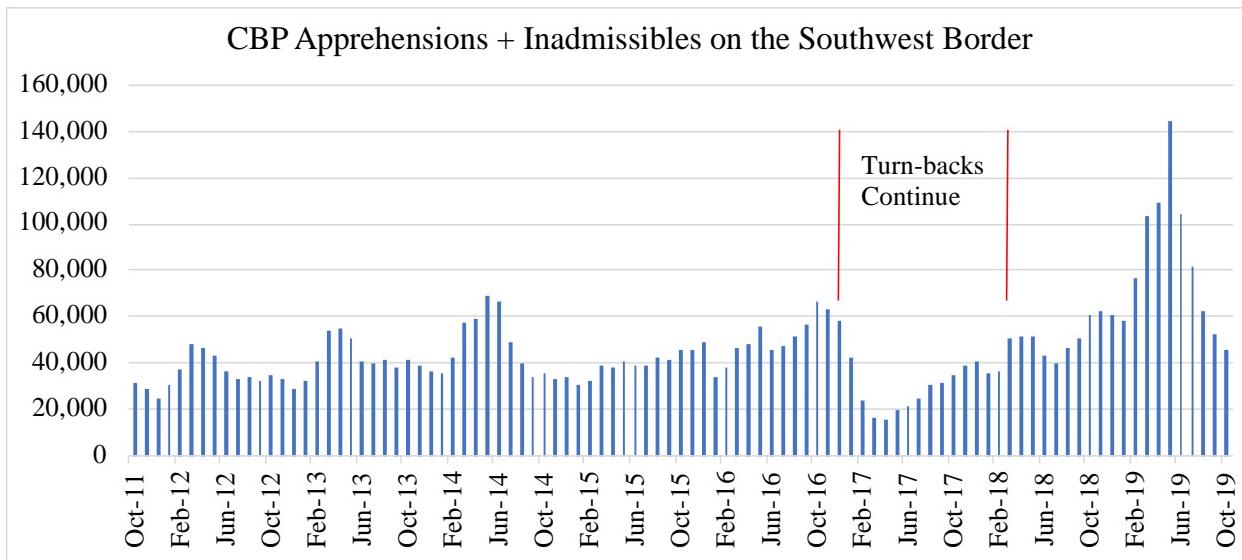
<sup>53</sup> CBPALORT000003.

<sup>54</sup> In December 2017, a line of asylum seekers once again formed in Tijuana. This line would morph into the notebook waitlist in April 2018. Kate Morrissey, “One year after notebook appears in Tijuana, confusion and anxiety continue in asylum line,” *The San Diego Union Tribune*, April 28, 2019, <https://www.sandiegouniontribune.com/news/immigration/story/2019-04-26/one-year-after-notebook-appears-in-tijuana-confusion-and-anxiety-continue-in-asylum-line>.

<sup>55</sup> AOL-DEF-00090108.

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turn-backs (see Graph 1).

**Graph 1: CBP Apprehensions and Inadmissibles at the Southwest Border<sup>56</sup>**

47. While metering was not standardized during this timeframe, there were continued cases of metering in San Ysidro. A May 2017 Human Rights First report noted that the metering system in San Ysidro continued through early 2017 and that in April 2017 CBP officers at the port of entry were continuing to tell arriving asylum seekers to first go to Grupo Beta for an appointment.<sup>57</sup> A CBP email from December 8, 2017 noted that in the San Diego sector, “we have been metering on and off the

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<sup>56</sup> Data comes from apprehensions and inadmissibles: “Southwest Border Migration FY 2020,” U.S. Customs and Border Protection, accessed December 6, 2019, <https://www.cbp.gov/newsroom/stats/sw-border-migration>.

<sup>57</sup> “Crossing the Line: U.S. Border Agents Illegally Reject Asylum Seekers,” Human Rights First, May 2017, <https://www.humanrightsfirst.org/sites/default/files/hrf-crossing-the-line-report.pdf>.

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past couple days based on our numbers hitting capacity.”<sup>58</sup>

**D. Current Metering Practices**

48. On April 27, 2018, the Executive Assistant Commissioner of the Office of Field Operations issued a “Metering Guidance” memo to the agency’s four Field Office Directors on the U.S.-Mexico border. The guidance allowed directors to “meter the flow of travelers at the land border,” and said that they could “establish and operate physical access controls at the borderline, including as close to the U.S.-Mexico border as operationally feasible.”<sup>59</sup> While the memo noted that CBP could not create a separate line for asylum seekers, it does allow for “lines for those with appropriate travel documents and those without such documents,” which operationally creates the same outcome. It also noted that ports should “inform the waiting travelers that processing at the port is currently at capacity,” finally providing CBP officers with a standardized explanation.<sup>60</sup> However, there appears to be widespread acknowledgement among CBP officers that this guidance was aimed to specifically target asylum seekers.<sup>61</sup>

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<sup>58</sup> AOL-DEF-00071011.

<sup>59</sup> “Metering Guidance,” Office of Field Operations, April 27, 2018. AOL-DEF-00196460.

<sup>60</sup> Ibid.

<sup>61</sup> Gibbons, Deposition, November 21, 2019.

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49. The context surrounding the timing of the Metering Guidance memo is relevant to understanding its purpose. The memo was introduced as a caravan of hundreds<sup>62</sup> of asylum seekers traveled through Mexico to the United States border and was sent to port directors with the written message that it served as “processing guidance during surge events.”<sup>63</sup> However, in the weeks following the Metering Guidance memo’s issuance, CBP began implementing the guidance across the entire U.S.-Mexico border, and not only at the San Ysidro and Calexico port of entries (which had been designated as OFO’s “processing hubs for caravan aliens”).<sup>64</sup> This was different from the previous metering instances, which were geographically limited and generally appeared to be responding to a sudden increase in migration numbers.

50. During the summer months of 2018, CBP officers set up control stations<sup>65</sup> at or near the limit line in ports of entry. While other pedestrians could still travel freely over the international line or through the turnstiles with their travel

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<sup>62</sup> The caravan reached a size of 1,450 to 1,550 participants from March 31, 2018 to April 1, 2018. It then splintered into smaller groups of several hundred individuals. AOL-DEF-00196741.

<sup>63</sup> CBP email correspondence. AOL-DEF-00011883.

<sup>64</sup> AOL-DEF-00196723.

<sup>65</sup> In these controls, CBP officers are generally stationed in pairs at the midpoint and they may have additional mobile infrastructure, such as fans or something to cover them from the sun.

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documents in hand, CBP began systematically blocking asylum seekers from ever reaching the U.S. side of the bridge or the port of entry’s entrance hall.

51. When a pedestrian approaches the U.S.-Mexico dividing line, CBP officers stand at the “control stations” on the international line or right behind it and ask for the individual’s migration paperwork. If the pedestrian does not have a U.S. passport or visa to enter the United States, CBP officers often physically block their passage into U.S. territory by standing in the center of the pedestrian walkway. CBP officers then tell arriving asylum seekers<sup>66</sup> that there is no capacity at the port of entry and the asylum seekers cannot currently be processed, which is also the explanation laid out in the “Metering Guidance.” At times, these stationed CBP officers may also instruct the arriving asylum seekers to contact officials on the Mexican side of the border, to go to local Mexican shelters, or to first get on an asylum waitlist.

52. After being turned away from the U.S. port of entry, asylum seekers must figure out where to stay in the Mexican border city and how to get in line to ask for asylum in the United States. In the weeks and months after the “Metering Guidance” memo, asylum seekers generally held their place in line by waiting in

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<sup>66</sup> The CBP officers know that the person is an asylum seeker based on their lack of appropriate migratory documents or if they preemptively announce that they would like to seek asylum to the CBP officers stationed at the limit line.

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physical lines on international bridges or outside the ports of entry. These initial lines were reported on the bridges outside ports of entry in Brownsville<sup>67</sup>, Hidalgo<sup>68</sup>,

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<sup>67</sup> Aurora Orozco, “Familias de inmigrantes esperan bajo inclemencias en puentes internacionales,” *El Nuevo Herald*, June 19, 2018, [http://www.elnuevoheraldo.com/el\\_valle/noticias\\_locales/familias-de-inmigrantes-esperan-bajo-inclemencias-en-puentes-internacionales/article\\_69abbd70-73dc-11e8-aa87-4b8d72916648.html](http://www.elnuevoheraldo.com/el_valle/noticias_locales/familias-de-inmigrantes-esperan-bajo-inclemencias-en-puentes-internacionales/article_69abbd70-73dc-11e8-aa87-4b8d72916648.html).

<sup>68</sup> Sandra Tovar, “‘Toman’ migrantes Puente en busca de asilo en EU,” *El Mañana*, May 22, 2018, <https://www.elmanana.com/toman-migrantes-puente-busca-asilo-eu-puente-internacional-migrantes-asilo-politico/4415659>.

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Roma<sup>69</sup>, Laredo<sup>70</sup>, Eagle Pass<sup>71</sup>, Nogales<sup>72</sup>, El Paso<sup>73</sup>, and San Diego<sup>74</sup>. In the following months, due to local residents’ concerns, hygiene issues, inclement weather, or disputes regarding fairness, Mexican officials, non-governmental organizations, or asylum seekers themselves began waitlists to allow people to hold their place in line with their name instead of physical presence. These asylum

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<sup>69</sup> Silvia Foster-Frau, “Asylum seekers denied legal entry into U.S. are camping out on bridges,” *San Antonio Express News*, June 6, 2018, <https://www.expressnews.com/news/local/article/Asylum-seekers-denied-legal-entry-into-U-S-are-12973965.php>.

<sup>70</sup> Meredith Hoffman, “The Horrible Conditions Endured by Migrants Hoping to Enter the US Legally,” *Vice News*, July 3, 2018, [https://www.vice.com/en\\_us/article/59qny3/migrants-hoping-to-get-us-asylum-forced-to-wait-on-bridge](https://www.vice.com/en_us/article/59qny3/migrants-hoping-to-get-us-asylum-forced-to-wait-on-bridge).

<sup>71</sup> “Incomoda a automovilistas y peatones presencia de migrantes en puentes internacionales de Piedras Negras,” La Rancherita del Aire, July 26, 2018, <https://www.rancherita.com.mx/noticias/detalles/53790/incomoda-a-automovilistas-y-peatones-presencia-de-migrantes-en-puentes-internacionales-de-piedras-negras.html#.XcjjtudKjGJ>.

<sup>72</sup> “Simon Romero & Miriam Jordan, “On the Border, a Discouraging New Message for Asylum Seekers: Wait,” *New York Times*, June 12, 2018, <https://www.nytimes.com/2018/06/12/us/asylum-seekers-mexico-border.html>.

<sup>73</sup> Silvia Foster-Frau, “Asylum seekers denied legal entry into U.S. are camping out on bridges,” *San Antonio Express-News*, June 6, 2018, <https://www.expressnews.com/news/local/article/Asylum-seekers-denied-legal-entry-into-U-S-are-12973965.php#photo-15680354>.

<sup>74</sup> “Asylum seekers wait days and weeks at U.S.-Mexico border,” *Associated Press*, June 7, 2018, <https://www.cbsnews.com/news/asylum-seekers-wait-days-and-weeks-at-u-s-mexico-border/>.

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waitlists have no standardized procedure or structure. These waitlists are still in place in every city with waiting asylum seekers, and may be managed by the asylum seekers themselves, Mexican government officials, or humanitarian workers.

**Table 2: Groups that Run the Asylum Waitlist (November 2019)<sup>75</sup>**

<b>List Managers</b>	<b>Number of Lists</b>	<b>Lists by City</b>
Non-governmental organization	9	Nuevo Laredo (6), Reynosa, Agua Prieta, San Luis Río Colorado
Grupo Beta	3	Tijuana, Mexicali, Ciudad Acuña
Asylum Seekers	5	Ciudad Juárez (3), Brownsville (2)
National Migration Institute	1	Brownsville
Civil Protection	2	Ciudad Acuña, Nogales
State Population Agency	1	Ciudad Juárez
Municipal Government	1	Piedras Negras

53. Similarly, there is no standardized Mexican or U.S. regulation of the asylum waitlists nor their managers.<sup>76</sup> There are also no controls to guarantee that these waitlists are being run transparently or without corruption. Due to this lack of oversight, asylum seekers and civil society organizations have alleged that some list managers charge asylum seekers to get on the asylum waitlist, including in Piedras

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<sup>75</sup> Cities may be listed in multiple categories if the city contains multiple waitlists. For example, in Ciudad Juárez, there are currently three Mexican asylum waitlists (one at each international bridge) and a non-Mexican asylum waitlist.

<sup>76</sup> Despite Mexican government entities managing the lists in certain cities, there does not appear to be any standardized guidance. This is evidenced by the different list formats and processes in different cities even when the same federal government agency is running the asylum waitlist.

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Negras<sup>77</sup>, Reynosa<sup>78</sup>, and Matamoros<sup>79</sup>. This makes seeking asylum at a U.S. port of entry dependent on whether asylum seekers and their loved ones can pay hundreds or thousands of dollars.

54. Additionally, the lack of regulations means that some cities can stop asylum seekers from joining waitlists altogether. For example, in Ciudad Acuña—opposite from Del Rio, Texas—the asylum waitlists for both individuals and families have been “closed” since March 2019.<sup>80</sup> This means that list managers (Civil

<sup>77</sup> “Metering Update,” Strauss Center for International Security and Law and the Center for U.S.-Mexican Studies, November 2019, [https://www.strausscenter.org/images/strauss/18-19/MSI/MeteringUpdate\\_191107.pdf](https://www.strausscenter.org/images/strauss/18-19/MSI/MeteringUpdate_191107.pdf).

<sup>78</sup> Emily Green, “Mexican officials are extorting thousands of dollars from migrants applying for asylum,” *Vice News*, May 13, 2019, [https://www.vice.com/en\\_us/article/kzdy4e/exclusive-mexican-officials-are-extorting-thousands-of-dollars-from-migrants-to-apply-for-asylum](https://www.vice.com/en_us/article/kzdy4e/exclusive-mexican-officials-are-extorting-thousands-of-dollars-from-migrants-to-apply-for-asylum); Carolina Garza, “Cubanos denuncian a INM de corrupción en trámite de asilo humanitario,” *Milenio*, June 5, 2019, <https://www.milenio.com/politica/cubanos-denuncian-inm-corrupcion-tramite-asilo-humanitario>.

<sup>79</sup> Molly Hennessy-Fiske, “Asylum seeker blocked at Texas border bridges say Mexican officials are demanding money to let them pass,” *Los Angeles Times*, November 22, 2018, <https://www.latimes.com/nation/la-fg-asylum-list-border-2018-story.html>.

<sup>80</sup> There were also reports that the Piedras Negras was periodically closed throughout 2019. “Metering Update,” Strauss Center for International Security and Law and the Center for U.S.-Mexican Studies, November 2019, [https://www.strausscenter.org/images/strauss/18-19/MSI/MeteringUpdate\\_191107.pdf](https://www.strausscenter.org/images/strauss/18-19/MSI/MeteringUpdate_191107.pdf).

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Protection for adults and Grupo Beta for families) are not accepting any additional asylum seekers onto the waitlists. While CBP officers are not involved in managing these lists, in certain cities such as Reynosa<sup>81</sup>, Piedras Negras<sup>82</sup>, and Mexicali<sup>83</sup>, the list managers reportedly share asylum seekers’ information with CBP officers before the asylum seekers return to the U.S. border to seek asylum.

55. Once asylum seekers get on a waitlist, they have to wait until their number is called. Every day, a CBP official communicates the number of people that they will receive that day to an individual in Mexico. This exact process depends on the port of entry and the waitlist structure in each Mexican city. According to list managers in cities such as Ciudad Juárez, Ciudad Acuña, and Piedras Negras, CBP officers directly call the Mexican individuals who manage the lists.<sup>84</sup> In other cities,

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<sup>81</sup> “Metering Update,” Strauss Center for International Security and Law and the Center for U.S.-Mexican Studies, November 2019, [https://www.strausscenter.org/images/strauss/18-19/MSI/MeteringUpdate\\_191107.pdf](https://www.strausscenter.org/images/strauss/18-19/MSI/MeteringUpdate_191107.pdf).

<sup>82</sup> “Barred at the Border,” Human Rights First, April 2019, [https://www.humanrightsfirst.org/sites/default/files/BARRED\\_AT\\_THE BORDER.pdf](https://www.humanrightsfirst.org/sites/default/files/BARRED_AT_THE_BORDER.pdf).

<sup>83</sup> “Asylum Processing and Waitlists at the U.S.-Mexico Border,” Strauss Center for International Security and Law, Center for U.S.-Mexican Studies, & Migration Policy Centre, December 2018, [https://www.strausscenter.org/images/strauss/18-19/MSI/AsylumReport\\_190308.pdf](https://www.strausscenter.org/images/strauss/18-19/MSI/AsylumReport_190308.pdf).

<sup>84</sup> In Ciudad Juárez, the list manager is a representative from the State Population Council (*Consejo Estatal de Población*, COESPO); in Ciudad Acuña, it is a representative from the city’s Civil Protection agency (Protección Civil); and in

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CBP officers provide their numbers directly to waiting asylum seekers. This was the case in the Roma and Progreso ports of entry, where asylum seekers waited on the international bridges because those Mexican cities do not have any migrant shelters.

(As of November 2019, there were no longer asylum seekers waiting at these two ports of entry.) More recently, Mexican asylum seekers have also created their own lists in Matamoros and Ciudad Juárez and communicate directly with CBP officers stationed at the international line.

56. In specific circumstances, there are cases of asylum seekers who are able to circumvent the official list. These include unaccompanied minors and individuals who were able to pay a bribe to corrupt list managers. There are also a small number of asylum seekers who are able to avoid metering by appearing at the limit line with a severe medical need or after being accompanied by an advocate. Similarly, a small number of asylum seekers have made it past the limit line and into U.S. territory by evading stationed CBP officers’ detection or by running into U.S. territory through the port of entry’s vehicle lanes. However, most asylum seekers are forced to put their names on an asylum waitlist and wait until their number is called.

57. Asylum seekers may have to wait for months on asylum waitlists. Over the last year, the Reports have documented the wait times on asylum waitlists. From

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Piedras Negras, it is a representative of the municipal government.

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December to August 2019, wait times continuously increased, and most of these lists reached their peak levels around August 2019 (as seen in Table 3). However, as of November 2019, asylum seekers were still waiting for months in Mexican cities to cross at the ports of entry in Brownsville, Eagle Pass, El Paso, Douglas, Nogales, Yuma, Calexico, and San Diego.

**Table 3: Peak Wait Times (August 2019)**

<b>Ports of Entry</b>	<b>Average Wait Time</b>
Brownsville	1 to 2 months
Hidalgo	2 to 3 months
Roma	9 days
Laredo	1 month
Eagle Pass	2 months
Del Rio	4 months (adults) / 2 months (families)
El Paso	3.5 to 6 months
Douglas	2 months
Nogales	2 to 3 months
San Luis	3 months
Calexico	6 to 12 months
San Ysidro	6 to 9 months

58. To skip these wait times, some individuals or groups of asylum seekers have sought alternative ways to enter U.S. territory. Some asylum seekers cross between ports of entry<sup>85</sup> and others enter U.S. territory by running down the vehicle lanes at ports of entry (as previously referenced). CBP refers to the individuals who

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<sup>85</sup> “Special Review – Initial Observations Regarding Family Separation Issues Under the Zero Tolerance Policy,” Department of Homeland Security, Office of the Inspector General, September 27, 2018, <https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-84-Sep18.pdf>.

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run through vehicle lanes as “circumventors,” and they are processed for expedited removal and as individuals who entered without inspection (EWI).<sup>86</sup> There are published reports of circumventors in multiple ports of entry, including in Rio Grande City<sup>87</sup>, Tecate<sup>88</sup>, Eagle Pass<sup>89</sup>, Nogales<sup>90</sup>, and Hidalgo<sup>91</sup>. These actions are a direct result of turn-backs and metering.

59. On November 8, 2018, CBP operated controls at or near the midpoint of international bridges and turnstiles in at least 24 ports of entry along the U.S.-

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<sup>86</sup> Gibbons, Deposition, November 21, 2019.

<sup>87</sup> “Metering Update,” Strauss Center for International Security and Law and the Center for U.S.-Mexican Studies, November 2019, [https://www.strausscenter.org/images/strauss/18-19/MSI/MeteringUpdate\\_191107.pdf](https://www.strausscenter.org/images/strauss/18-19/MSI/MeteringUpdate_191107.pdf).

<sup>88</sup> Gibbons, Deposition, November 21, 2019.

<sup>89</sup> “Podrían cerrar puentes internacionales, si migrantes intentan cruzar de forma irregular a EU: Enlace municipal,” *La Rancherita del Aire*, May 13, 2019, <https://rancherita.com.mx/noticias/detalles/66407/podrian-cerrar-puentes-internacionales-si-migrantes-intentan-cruzar-de-forma-irregular-a-eu-enlace-municipal.html#.Xef45TJKjGI>.

<sup>90</sup> Astrid Galvan, “Asylum seekers jam US border crossings to evade Trump policy,” Associated Press, December 3, 2019, [https://www.washingtonpost.com/business/asylum-seekers-jam-us-border-crossings-to-evade-trump-policy/2019/12/03/24d6d30c-160f-11ea-80d6-d0ca7007273f\\_story.html](https://www.washingtonpost.com/business/asylum-seekers-jam-us-border-crossings-to-evade-trump-policy/2019/12/03/24d6d30c-160f-11ea-80d6-d0ca7007273f_story.html).

<sup>91</sup> AOL-DEF-00088390.

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Mexico border that allow for pedestrian traffic.<sup>92</sup> One year later, in early November 2019, the November Metering Update report confirmed that these controls remained in place at every port of entry covered in the report (totaling 14 ports of entry).

60. The presence of these controls is constant, regardless of the numbers of asylum seekers waiting at the international line or arriving at the port. For example, in November 2019, asylum seekers arriving in Reynosa, Tamaulipas—which had a low number of waiting asylum seekers—still had to first go to the local migrant shelter to put their name on the asylum waitlist instead of traveling directly to the Hidalgo port of entry to ask for asylum.<sup>93</sup> Other ports of entry such as Progreso and Roma no longer have any asylum seekers waiting on the international bridges (and have not for months), but CBP officials remain stationed at the midpoint. While the email introducing CBP’s metering guidelines to port directors describes the limit line position and metering as a response to “surge events”<sup>94</sup>, the policy has remained in place even when there are no waiting asylum seekers.

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<sup>92</sup> AOL-DEF-00210508.

<sup>93</sup> Given the low numbers, shelter staff noted that most arriving asylum seekers were processed the following day (after the shelter registered them and sent their information to CBP). “Metering Update,” Strauss Center for International Security and Law and the Center for U.S.-Mexican Studies, November 2019, [https://www.strausscenter.org/images/strauss/18-19/MSI/MeteringUpdate\\_191107.pdf](https://www.strausscenter.org/images/strauss/18-19/MSI/MeteringUpdate_191107.pdf).

<sup>94</sup> AOL-DEF-00196458.

**HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY****E. CBP’s MCAT and Queue Management Reports Provide a Common Method For Analyzing Defendants’ Capacity Explanation**

61. Since May 2016, CBP has justified its turn-back and metering policy as necessary due to a lack of capacity within ports of entry. Port capacity is a fluid number, both since CBP could allocate more personnel and other resources to process asylum seekers and thereby increase capacity,<sup>95</sup> and since other incidents at the port could pull some of these resources away from asylum processing. Changes to port infrastructure may also increase or decrease capacity, and certain groups of asylum seekers or other individuals may need to be held in distinct areas, limiting capacity. Indeed, within MCAT Reports, the stated capacity levels for ports of entry shifted multiple times from 2016 through 2019. (See Table 8 in the Appendix.)

62. However, despite this fluidity, there is a common method for analyzing whether the capacity of a port of entry might justify turning back asylum seekers. CBP’s MCAT and Queue Management Reports<sup>96</sup> were compiled daily to measure capacity at ports of entry along the border. These reports record operationally important information, such as the number of people in custody, the percent capacity

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<sup>95</sup> This is discussed is noted in CBP’s Mass Migration Contingency documents and in additional CBP documents. *See AOL-DEF-00196723; AOL-DEF-00057105.*

<sup>96</sup> The requirement to submit daily Queue Management Reports began on June 18, 2018. *See AOL-DEF-00053604.*

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being utilized at of each port of entry, and the number of people waiting to enter the port of entry. Using this data, it is possible to see a port of entry’s capacity levels over time and to track whether this capacity might justify turning back asylum seekers.

63. The first finding from reviewing CBP’s MCAT and Queue Management Reports is that most ports of entry consistently reported that they were below capacity from 2016 to 2019. Further still, some ports of entry reported being consistently below 50 percent capacity. For example, from June 18, 2018 to July 15, 2019,<sup>97</sup> Queue Management Reports showed that 18 of the 24 ports of entry were at or below 50 percent capacity for more than half of the days for which there was data. Cities such as Otay Mesa, Tecate, Calexico East, and Andrade all reported that the ports of entry were at or below 50 percent capacity for every single day with available data.<sup>98</sup>

64. The second finding was that there is a wide variation in utilized capacity levels among ports of entry. While in 2019, there was a group of ports of entry that were consistently at or below 50 percent capacity, there was also a smaller number

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<sup>97</sup> June 18, 2018 is the first day with available data. July 15, 2019 is the last day with available data.

<sup>98</sup> I reviewed the MCAT and Queue Management Reports that were provided to me. Table 4 provides the total number with relevant data by port of entry.

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of ports of entry that were often near or above capacity. According to the Queue Management Data, the ports of entry in Eagle Pass, El Paso, Hidalgo, and Douglas were most frequently at or above capacity.<sup>99</sup> Both Eagle Pass and Douglas are non-redirecting small ports of entry with capacities of 16 and 4, respectively. However, the El Paso and Hidalgo ports of entry are larger.

65. El Paso’ high utilized capacity numbers in 2018 and 2019 appear to be related to the port of entry’s varying total capacity levels. From November 30, 2016 through July 13, 2019, MCAT Reports listed three different capacity numbers for El Paso: 226 (November 30, 2016 – April 27, 2018), 306 (May 4, 2018 – June 10, 2018, and 115 (June 5, 2018 – July 13, 2019). The majority of the days where the El Paso port of entry’s capacity exceeded 100 percent took place after the stated capacity numbers decreased to 115. For example, on May 15, 2018, El Paso OFO reported that 170 people were in custody, which totaled a 56 percent utilized capacity.<sup>100</sup> A little more than a year later, on June 17, 2019, El Paso OFO also reported that 170

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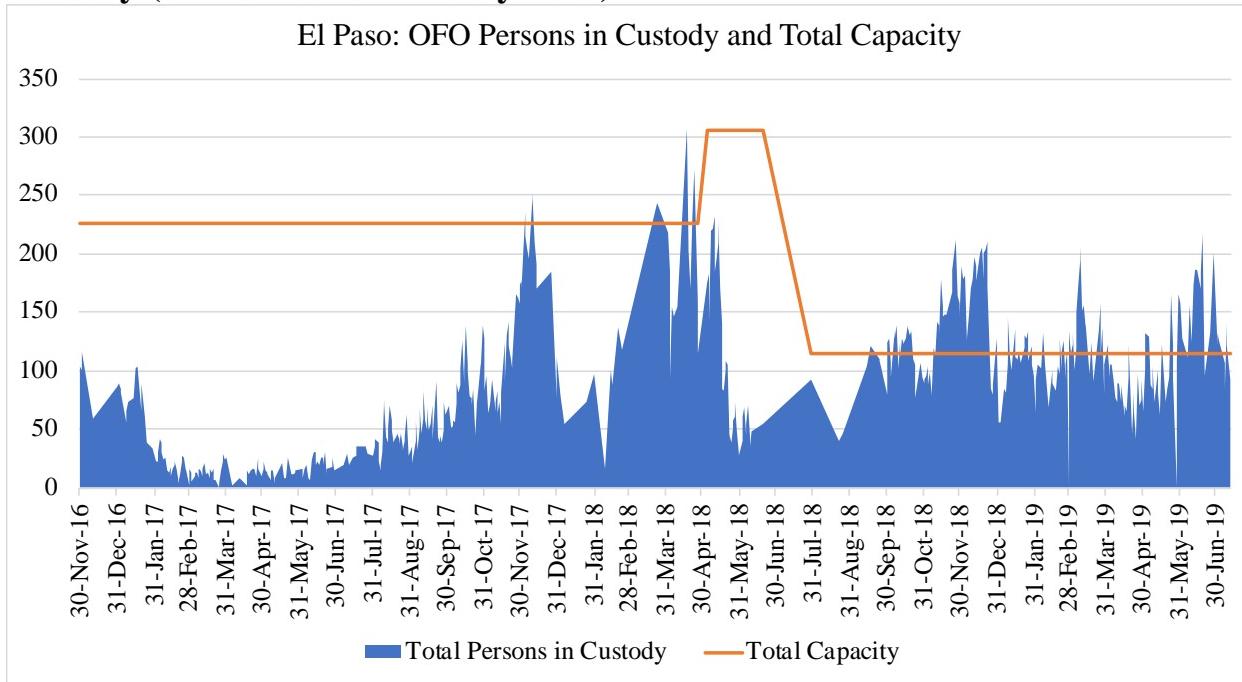
<sup>99</sup> In June 2018, CBP in Eagle Pass specified a reason why metering was affecting port capacity in the Queue Management Reports, writing: “Recurring Issue: EGP is now staffing queue management point at POE#1 during non-operational hours (2300-700hrs) to prevent additional groups claiming CF [credible fear] from entering the US. This has caused additional staffing/OT expenditures for EGP. Staffing requires 2 CBPO officer / 1 CBP vehicle.” AOL-DEF-00095740.

<sup>100</sup> AOL-DEF-00102654.

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people were in custody, but this time it reported that it was at 148 percent capacity.<sup>101</sup>

**Graph 2: El Paso’s Total Capacity Levels and Number of Persons in OFO Custody (November 2016 – July 2019)**

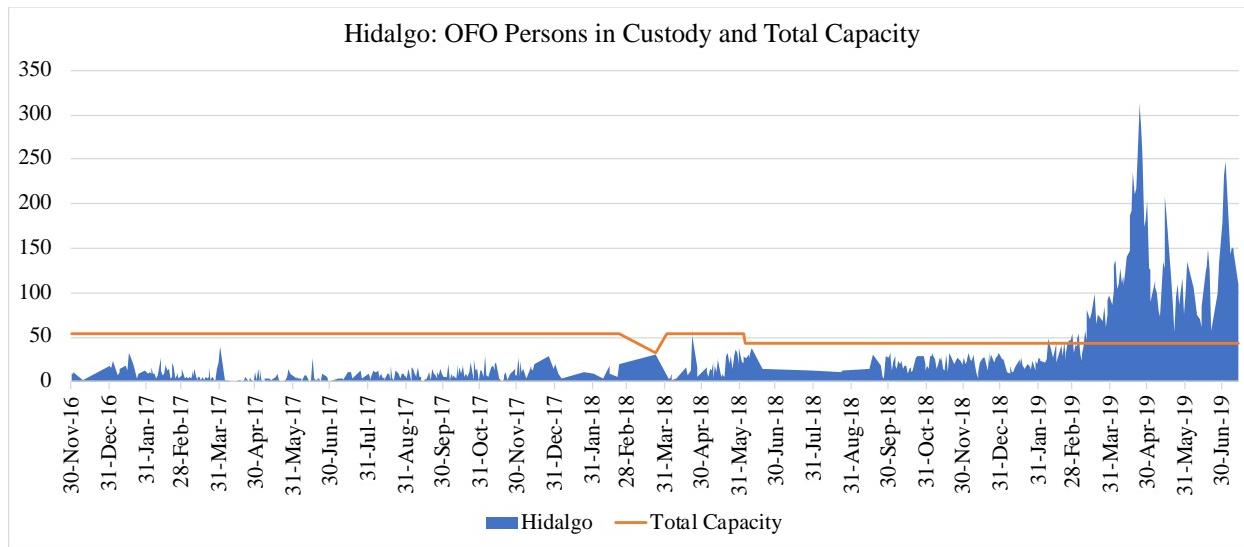


66. At the Hidalgo port of entry, it is possible that the high utilized capacity numbers are related to an increase in circumventors entering U.S. territory via the port’s vehicle lanes, given that the port of entry’s numbers peaked from March 2019 to July 2019 (in the available data), and CBP emails confirm that there were large numbers of circumventors entering the port of entry during that time period.<sup>102</sup>

**Graph 3: Number of People in Custody in the Hidalgo Port of Entry (MCAT)**

<sup>101</sup> AOL-DEF-00082489.

<sup>102</sup> This was discussed as a contributing factor for high capacity numbers in a March 2019 CBP email. AOL-DEF-00088390.

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67. Table 4 shows the capacity levels at each port of entry, using Queue Management Reports from June 2018 to July 2019. (MCAT data from 2016 through 2019 is in the Appendix).

**Table 4: Field Queue Management Reports (2018-2019)**

Sector	Port of Entry	Days with Data	0-50% Capacity	51-100% Capacity	>100% Capacity
Laredo	Brownsville	314	86%	14%	0%
	Progreso	314	93%	6%	1%
	Hidalgo	314	46%	26%	28%
	Rio Grande	314	96%	4%	0%
	Roma	314	88%	12%	0%
	Laredo	314	89%	11%	0%
	Eagle Pass	314	9%	47%	44%
	Del Rio	312	82%	17%	0%
El Paso	Port of El Paso	213	6%	66%	28%
	Santa Teresa	213	74%	20%	6%
	Columbus	212	97%	3%	0%
	Tornillo	213	99%	1%	0%
	Presidio	213	91%	8%	1%
	Tucson	Douglas	213	60%	19%
					21%

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	Lukerville	213	80%	9%	11%
	Naco	213	92%	4%	4%
	Nogales	213	25%	61%	14%
	San Luis	214	62%	38%	0%
San Diego	San Ysidro	219	5%	89%	5%
	Otay Mesa	219	100%	0%	0%
	Tecate	219	100%	0%	0%
	Calexico West	219	29%	69%	1%
	Calexico East	218	100%	0%	0%
	Andrade	219	100%	0%	0%

*Total percent may not equal 100% due to rounding.*

68. This finding is consistent with CBP’s own evaluation of its Queue Management data from June 2018 through November 2018. In this evaluation, CBP followed a similar methodology to the one that was used to create this expert report: CBP extracted its Queue Management Reports from emails within senior CBP personnel’s official email accounts and entered the data into an excel spreadsheet.<sup>103</sup> Using this methodology, CBP’s first conclusion was also that there exists a large deviation among the ports of entry, writing that “some ports are never close to capacity but still have aliens waiting and a few other ports (Eagle Pass, El Paso, and

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<sup>103</sup> Also, similar to CBP, I also calculated the POE capacity based on the stated percent at capacity of each port of entry and using MCAT’s reported capacity numbers. Similar to CBP, I also discovered multiple errors in CBP’s capacity percentages, which often stated 100 percent capacity despite reporting low numbers of individuals in custody. I did not attempt to fix these errors in my calculations. AOL-DEF-00210504.

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Santa Teresa<sup>104</sup>) routinely exceed capacity.”<sup>105</sup>

69. The Queue Management Reports also include the number of people waiting at the “limit line,” which is at or near the international boundary. This number serves to show that CBP was aware that asylum seekers were waiting in Mexican border cities. However, despite this recognition, multiple ports of entry continued to operate with capacity levels at or below 50 percent. For example, in the 313 Queue Management Reports from June 18, 2018 through July 15, 2019 that provide data for the Laredo port of entry, 227 of them noted that CBP was aware that there was a line of asylum seekers waiting in Nuevo Laredo. However, in 201 of those days (89 percent), the Laredo port of entry both reported that it had a line of asylum seekers waiting to enter the United States and that its utilized port capacity was at or below 50 percent. Table 5 contains the information for each port of entry. (Table 9 in the Appendix contains the percent of days at each port of entry where there was a reported line and the port capacity was at or below 75 percent).

**Table 5: Days with Reported Queues at the Limit Line and Port of Entry Capacity Levels Below 50 Percent**

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<sup>104</sup> In the reviewed data, CBP calculated that Santa Teresa’s average capacity was 48 percent for the period in question. Its data shows that Santa Teresa exceeded full capacity (defined as greater than 100 percent) in 10 out of the 95 days. This means that the Santa Teresa POE exceeded its capacity 10.5 percent of the time. By comparison, the Eagle Pass port of entry exceeded capacity 42.1 percent of the time and the El Paso port of entry exceeded capacity 22 percent of the time.

<sup>105</sup> AOL-DEF-00210504.

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<b>City</b>	<b># of Days with Data</b>	<b># of Days with Reported Line</b>	<b># of Days with Reported Line &amp; Port Capacity at or Below 50%</b>	<b>Percent of Days with Reported Line Where Port Capacity at or Below 50%</b>
Laredo	313	227	201	89%
Rio Grande	312	17	15	88%
Progreso	313	105	90	86%
Brownsville	313	247	207	84%
Roma	313	95	65	68%
Del Rio	312	92	48	52%
Nogales	214	76	24	32%
Douglas	214	13	4	31%
Eagle Pass	313	145	13	9%
Hidalgo	313	117	10	9%
El Paso	214	123	7	6%

70. Additionally, despite uniformly implementing turn-backs and metering, no port of entry appears to have activated a contingency plan for addressing mass migration or used OFO triggers to process additional people.<sup>106</sup> These contingency plans exist to provide roadmaps for ports of entry when they experience larger than normal migration numbers, allowing the ports to be flexible in their capacity and response.

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<sup>106</sup> In an April 18, 2018 email, an Assistant Port Director in the San Diego Field Office sent an email outlining San Ysidro’s Mass Migration Plan and the triggers in place to double OFO’s daily processing capacity from 70 to 140. It appears that on April 18, 2018, this plan was beginning to be put in place, with the first trigger of eight people being reshuffled within the port to increase capacity after 307 asylum seekers arrived at the port of entry. After the Metering Guidance issuance, there were no additional documents discussing measures to increase capacity. AOL-DEF-00196691; AOL-DEF-00196695; AOL-DEF-00196745.

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71. For example, the April 5, 2018 DHS Integrated Concept of Operations report—which is a document that was created for the Southern California Region to lay out a plan for addressing an arriving refugee caravan—notes that in an “ideal implementation, processing (2) maintains sufficient throughput to match the input of arrival and interdiction (1). Similarly, transfer (4) from CBP custody maintains sufficient throughput to manage established CBP detention tolerances (3).”<sup>107</sup> In other words, the DHS Integrated Concept of Operations report was created to allow processing capacities to accelerate and match higher than normal migration numbers.

72. To accomplish this objective, the document lays out a series of stages: arrival, processing, detention and transportation, and transfer. For the arrival, the Integrated Concept of Operations notes that local OFO offices and OFO within Imperial and San Diego counties would shift, assign, and/or combine local or regional resources in response to arrivals. Regarding processing numbers, the document states that “if processing capacities at any given Border Patrol Station or OFO Processing Hub are exceeded, caravan aliens will be dispersed to CBP facilities in the local area to increase processing capacity.”<sup>108</sup> If that did not work, the Concept

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<sup>107</sup> AOL-DEF-00196723.

<sup>108</sup> AOL-DEF-00196723.

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of Operations noted that “caravan aliens would be dispersed to CBP facilities within the region and/or regional virtual processing capabilities will be utilized to increase processing capacity.” And lastly, if even that was not enough, “national virtual processing capacities will be requested.”<sup>109</sup> These measures show that CBP has the structures in place to increase capacity at a port of entry or across all ports of entry to allow for additional processing if necessary. These measures were never activated.<sup>110</sup>

73. Instead, it appears that there were conscious decisions at times to not expand capacity at ports of entry. On April 21, 2018, the Executive Director for Operations in the Office of Field Operations wrote an email regarding “high capacity in Laredo.”<sup>111</sup> On that day the MCAT Reports noted that there were 119 people in custody, putting the port of entry at 132 percent capacity according to CBP’s measurements.<sup>112</sup> However, the Laredo Field Office did not activate its Contingency

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<sup>109</sup> AOL-DEF-00196723.

<sup>110</sup> There are isolated examples in the CBP documents that show OFO cooperating with Border Patrol to create space. However, these do not appear to be part of a larger activation of a contingency plan. AOL-DEF-00088390.

<sup>111</sup> AOL-DEF-00196623.

<sup>112</sup> AOL-DEF-00196624.

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Plan<sup>113</sup> to increase capacity.<sup>114</sup> Instead, the Executive Director noted, “Remember that we should not convert space to accommodate … and should hold at the line if necessary.”<sup>115</sup>

74. Lastly, the third finding was that certain ports of entry in the Laredo and San Diego sectors appear to have redirected or to be currently redirecting asylum seekers to nearby larger ports. According to the Queue Management Reports, these ports of entry include the Progreso, Rio Grande, and Roma ports in the Laredo sector and the Otay Mesa, Tecate, Calexico East, and Andrade ports of entry in the San Diego sector. Some of this redirecting appears to have been outlined in musters. For example, a September 4, 2018 muster in Tecate formalized this practice, noting “Due to the facility and operating hour limitations, this necessitates that we redirect asylum seekers to our processing hubs in Calexico West or San Ysidro PedWest.”<sup>116</sup>

75. The POEs engaging in redirecting and the recipient POEs are listed in Table 6. The date ranges are based on the availability of written confirmation of the

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<sup>113</sup> AOL-DEF-00011011.

<sup>114</sup> The email from the Executive Director did ask if the Laredo port of entry was able to use Border Patrol space, which is listed in the Laredo Contingency Plan as a step to take when the port’s capacity is strained. It does not appear that any other part of the Contingency Plan was activated.

<sup>115</sup> AOL-DEF-00196623.

<sup>116</sup> Gibbons, Deposition, November 21, 2019.

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redirecting practice—generally from Queue Management Reports—and should not be viewed as the exact dates that redirecting occurred. For example, despite Queue Management Reports from June 22, 2019 through July 15, 2019<sup>117</sup> that noted that no ports of entry were redirecting asylum seekers, the Otay Mesa, Tecate, Calexico East, and Andrade ports of entry all continued to report that they had zero individuals in custody. Similarly, the September 2019 DHS Office of the Inspector General Report and Gibbons’ deposition both affirm that the redirecting practice continued in Tecate through September 2019 and December 2019, respectively.<sup>118</sup>

**Table 6: Redirecting Ports of Entry and their Recipient Ports of Entry**

Date <sup>119</sup>	Redirecting POE	Recipient POE
June 20, 2018 – May 8, 2019	Progreso	Brownsville
June 20, 2018 – May 8, 2019	Rio Grande	Hidalgo
June 20, 2018 – May 8, 2019	Roma	Hidalgo
June 20, 2018 – June 21, 2019	Otay Mesa	San Ysidro
July 9, 2019 – June 21, 2019	Tecate	San Ysidro or Calexico West
June 20, 2018 – June 21, 2019	Calexico East	Calexico West
June 20, 2018 – June 21, 2019	Andrade	Calexico West

76. However, there is variation among the redirecting ports of entry. In the

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<sup>117</sup> The July 15, 2019 report was the latest available report.

<sup>118</sup> Gibbons, Deposition, November 21, 2019.

<sup>119</sup> The start dates are from AOL-DEF-00210508 and the end dates are from Queue Management Reports. May 8, 2019: AOL-DEF-00087047 and June 21, 2019: AOL-DEF-00086326.

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Laredo sector, the Queue Management Reports from June 20, 2018 through May 8, 2019 noted that the redirecting ports continued to accept asylum seekers and noted that they redirected “when necessary.” By comparison, the ports of entry in the San Diego sector continuously reported that they had zero intakes of asylum seekers. According to CBP’s own analysis of the Queue Management Reports, between June 20, 2018 and November 8, 2018, the redirecting ports continuously turned away arriving asylum seekers despite their detention facilities being completely empty on 80 percent of the days.<sup>120</sup> This finding corresponds with Gibbons’ deposition, where he confirmed that CBP officers in Tecate were instructed to tell arriving asylum seekers that the port of entry was at capacity even when they were aware that the port had sufficient capacity to process asylum seekers.<sup>121</sup>

**F. Scope of Population Affected by Turn-backs and Metering**

77. From May 2016 through April 2018, asylum seekers were metered at the San Diego port of entry, and periodically at ports of entry along the entire border. However, since April 2018, turn-backs and metering have applied to the vast majority of asylum seekers arriving at the U.S.-Mexico border without a visa to enter

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<sup>120</sup> AOL-DEF-00210504.

<sup>121</sup> Gibbons, Deposition, November 21, 2019.

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the United States.<sup>122</sup>

78. It is not possible to provide a precise figure regarding the total number of people who have been turned back and metered since the policy began. CBP does not document when it turns people away from ports of entry or when it tells them that the port of entry is at capacity. However, it is possible to provide rough estimates for certain cities in specific time frames. For example, from October 2018 through November 26, 2019, at least 22,000 people signed up on asylum waitlists in Ciudad Juárez.<sup>123</sup> From April 2018 through December 6, 2019, 35,640 people had been processed through the Tijuana waiting list.<sup>124</sup>

79. The Reports also document periodic snapshots of the number of people

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<sup>122</sup> The exemptions include unaccompanied minors, individuals who were able to pay a bribe to corrupt list managers and circumvent the asylum waitlist, or asylum seekers who are able to avoid metering by appearing at the limit line with a severe medical need or after being accompanied by an advocate.

<sup>123</sup> 19,180 people have signed up on the asylum waitlists in Ciudad Juárez, and 3,000 Mexicans in the city created their own waitlists at each international bridge. Hérika Martínez Prado, “No se presentan a llamado de EU,” *El Diario de Juárez*, December 2, 2019, <https://diario.mx/juarez/no-se-presentan-a-llamado-de-eu-20191201-1594784.html>; “Metering Update,” Strauss Center for International Security and Law and the Center for U.S.-Mexican Studies, November 2019, [https://www.strausscenter.org/images/straus/18-19/MSI/MeteringUpdate\\_191107.pdf](https://www.strausscenter.org/images/straus/18-19/MSI/MeteringUpdate_191107.pdf).

<sup>124</sup> The latest list number in Tijuana is published on “elnumerodelalista.com”. On Friday, December 6, 2019, the latest number was 3,564. There are 10 people for each number, totaling 35,640. The total number of people on the list is even larger. <http://www.elnumerodelalista.com/>.

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who had been metered and were waiting on asylum waiting lists at the time of each Report’s publication. The November 2018 report counted 6,000 people<sup>125</sup> on metering waitlists in 6 cities; the February 2019 update counted 4,800 people<sup>126</sup> in 8 cities; the May 2019 update counted 19,000 people<sup>127</sup> in 13 cities, the August 2019 update counted 26,000<sup>128</sup> in 12 cities, and the November report counted 21,400 people<sup>129</sup> in 11 cities. This creates a combined total of 77,200 people counted on asylum waitlists, although these numbers only capture snapshots of various lists and do not cover all ports of entry. Additionally, the number is further complicated since

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<sup>125</sup> “Asylum Processing and Waitlists at the U.S.-Mexico Border,” Strauss Center for International Security and Law, Center for U.S.-Mexican Studies, & Migration Policy Centre, December 2018, [https://www.strausscenter.org/images/strauss/18-19/MSI/AsylumReport\\_190308.pdf](https://www.strausscenter.org/images/strauss/18-19/MSI/AsylumReport_190308.pdf).

<sup>126</sup>“Metering Update,” Strauss Center for International Security and Law and the Center for U.S.-Mexican Studies, February 2019, [https://www.strausscenter.org/images/MSI/MeteringUpdate\\_190808.pdf](https://www.strausscenter.org/images/MSI/MeteringUpdate_190808.pdf).

<sup>127</sup>“Metering Update,” Strauss Center for International Security and Law and the Center for U.S.-Mexican Studies, May 2019, [https://www.strausscenter.org/images/strauss/18-19/MSI/Metering-Report-May-2019-MSI\\_5.20.pdf](https://www.strausscenter.org/images/strauss/18-19/MSI/Metering-Report-May-2019-MSI_5.20.pdf).

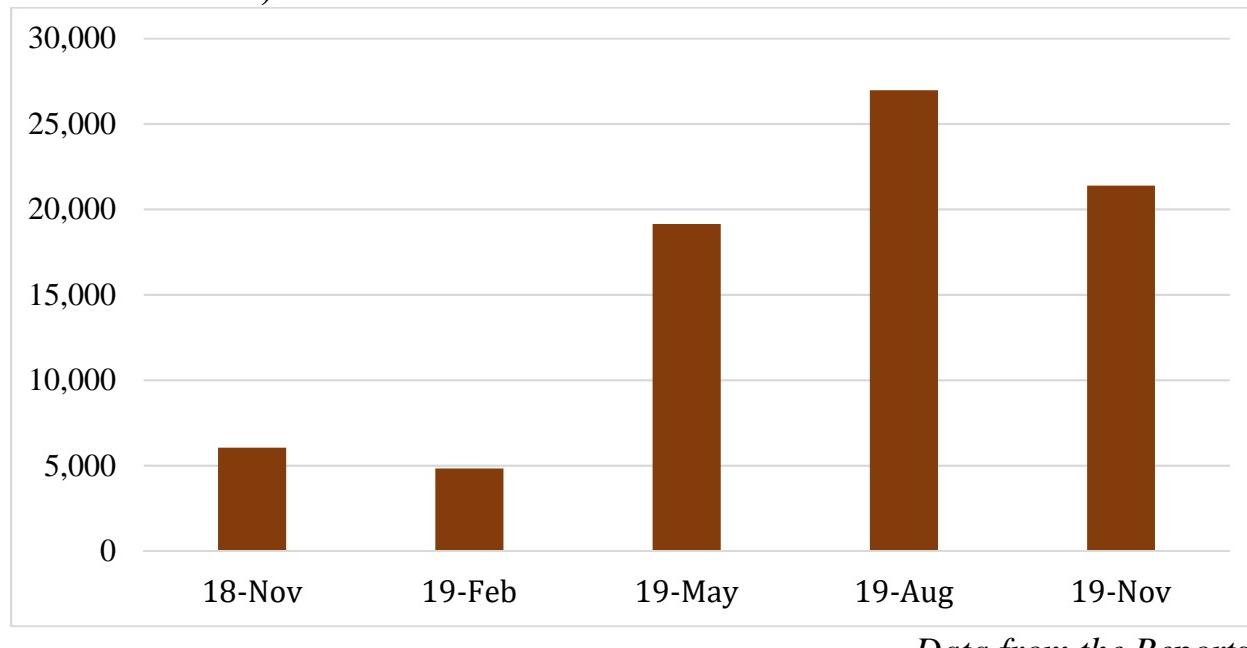
<sup>128</sup> “Metering Update,” Strauss Center for International Security and Law and the Center for U.S.-Mexican Studies, August 2019, [https://www.strausscenter.org/images/strauss/18-19/MSI/MSI\\_MeteringUpdate\\_190215.pdf](https://www.strausscenter.org/images/strauss/18-19/MSI/MSI_MeteringUpdate_190215.pdf).

<sup>129</sup> “Metering Update,” Strauss Center for International Security and Law and the Center for U.S.-Mexican Studies, November 2019, [https://www.strausscenter.org/images/strauss/18-19/MSI/MeteringUpdate\\_191107.pdf](https://www.strausscenter.org/images/strauss/18-19/MSI/MeteringUpdate_191107.pdf).

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some of these individuals may be repeated in multiple updates, given the long wait times. Overall, it’s clear that tens of thousands of people have been metered along the U.S.-Mexico border.

**Graph 4: Number of People on Asylum Waitlists (November 2018 – November 2019)**



*Data from the Reports.*

80. Additionally, the asylum waitlists and the Reports’ counts of individuals waiting in Mexico only include the asylum seekers who signed up on a waitlist. They do not count unaccompanied minors, who are often excluded from waitlists and are at times allowed to bypass CBP’s metering policy. They also do not include asylum seekers who were turned back to Mexico after seeking asylum at port of entry and never joined a list.

81. Some of these individuals crossed between ports of entry. In January 2017, the American Immigration Council provided three examples from 2016 of

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turn-backs that led to asylum seekers crossing into the United States between ports of entry near Laredo, Reynosa, and El Paso (during that time period, there were no asylum waitlists in the corresponding Mexican cities).<sup>130</sup> And the Department of Homeland Security’s Office of the Inspector General published a report in September 2018 that covered metering, writing “OIG saw evidence that limiting the volume of asylum-seekers entering at ports of entry leads some aliens who would otherwise seek legal entry into the United States to cross the border illegally.”<sup>131</sup> These asylum seekers’ experiences with turn-backs and metering are not recorded, and their number is unknown. Similarly, there have been allegations in Tijuana that black asylum seekers were at times excluded from waitlists, and as such would not be counted.

**G. Systematic Denial**

82. Metering serves as a denial of access to the United States’ asylum process at the moment that an asylum seeker is sent back to Mexico. This initial

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<sup>130</sup> “Re: U.S. Customs and Border Protection’s Systemic Denial of Entry to Asylum Seekers at Ports of Entry on U.S.-Mexico Border, American Immigration Council, January 13, 2017, [https://www.americanimmigrationcouncil.org/sites/default/files/general\\_litigation/cbp\\_systemic\\_denial\\_of\\_entry\\_to\\_asylum\\_seekers\\_advocacy\\_document.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/cbp_systemic_denial_of_entry_to_asylum_seekers_advocacy_document.pdf).

<sup>131</sup> “Special Review – Initial Observations Regarding Family Separation Issues Under the Zero Tolerance Policy,” Department of Homeland Security, Office of the Inspector General, September 27, 2018, <https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-84-Sep18.pdf>.

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denial can become permanent. As mentioned earlier, in order to be gain access to the U.S. asylum process, asylum seekers in many Mexican cities must join asylum waitlists that are run by unregulated list managers. At least two of these lists have been “closed” since March 2019 and have not allowed arriving asylum seekers to join.<sup>132</sup> Other lists have required the payment of hundreds or thousands of dollars for asylum seekers to access them. This means that accessing the U.S. asylum process in these locations has become dependent on the structure of an unregulated list system in Mexico or the ability to pay large sums of money to a third party.

83. Second, due to metering, asylum seekers are now waiting weeks or months in precarious or dangerous conditions before even having a chance to ask for asylum. The cities of Matamoros, Nuevo Progreso, Reynosa, Ciudad Miguel Alemán, and Nuevo Laredo are all located in the Mexican state of Tamaulipas, which the U.S. State Department has given a Level 4 advisory of “Do Not Travel.” The U.S. travel advisory warns that in Tamaulipas “Violent crime, such as murder, armed robbery, carjacking, kidnapping, extortion, and sexual assault, is common.”<sup>133</sup> Three

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<sup>132</sup> These include the individual and family lists in Ciudad Acuña. There have been reports that the Piedras Negras list was periodically closed in 2019.

<sup>133</sup> It also notes that “Gang activity, including gun battles and blockades, is widespread. Armed criminal groups target public and private passenger buses as well as private automobiles traveling through Tamaulipas, often taking passengers hostage and demanding ransom payments. Federal and state security forces have limited capability to respond to violence in many parts of the state.” “Mexico Travel

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other Mexican border states—Coahuila, Chihuahua, and Sonora—have a Level 3 State Department travel advisory of “Reconsider Travel.”<sup>134</sup> Baja California has a Level 2 travel advisory of “Exercise Increased Caution.”<sup>135</sup>

84. While asylum seekers wait in Mexican border cities, some have been targeted for crimes, such as robberies, assault, and frequently kidnappings. In 2019, Human Rights First documented a case in Nuevo Laredo where a Guatemalan man on the asylum waitlist was kidnapped after leaving a migrant shelter to search for temporary employment.<sup>136</sup> In January 2019, I also documented a case where a Salvadoran family was kidnapped in Piedras Negras in July 2018 while waiting for their number to be called on the waitlist. When this family was released by Coahuila State Police, they were sent to the National Migration Institute, which began

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Advisory,” U.S. State Department, accessed November 11, 2019, <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/mexico-travel-advisory.html>.

<sup>134</sup> The ports of entry in Coahuila are Eagle Pass and Del Rio. The ports of entry in Chihuahua are El Paso, Santa Teresa, Tornillo, and Columbus. The ports of entry in Sonora are Douglas, Lukeville, Naco, Nogales, and San Luis.

<sup>135</sup> The ports of entry in Baja California are Andrade, Calexico East, Calexico West, Tecate, Otay Mesa, and San Ysidro.

<sup>136</sup> “Barred at the Border,” Human Rights First, April 2019, [https://www.humanrightsfirst.org/sites/default/files/BARRED\\_AT\\_THE\\_BORDER.pdf](https://www.humanrightsfirst.org/sites/default/files/BARRED_AT_THE_BORDER.pdf).

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deportation proceedings to send them back to El Salvador.<sup>137</sup>

85. Given that Mexican law enforcement are legally mandated to channel anyone in the country without migratory paperwork to the National Migration Institute (regardless of whether or not they are waiting on an asylum waitlist), there are surely other cases where kidnapped asylum seekers were channeled into deportation proceedings.<sup>138</sup> Additionally, asylum seekers waiting on metering lists are not provided any legal documents to remain in Mexico, and, according to Article 98 of Mexico’s 2011 Migratory Law, any foreigner detected that does not have the documents accrediting their regular migratory status in the country will be subject to apprehension.<sup>139</sup>

86. Third, there are also cases of turn-backs and metering that have led to

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<sup>137</sup> Stephanie Leutert and Shaw Drake, “‘We are Full’: What Asylum Seekers Are Told,” *The New York Times*, January 28, 2019, <https://www.nytimes.com/2019/01/28/opinion/asylum-border-immigrants-trump.html>.

<sup>138</sup> Only the National Migration Institute is authorized to check an individual’s migratory paperwork. The 2011 Migratory Law outlines that the Federal Police (and now the National Guard) can assist the National Migration Institute in its migration enforcement efforts when their assistance is requested. However, unauthorized migrants that are discovered during routine law enforcement work are generally channeled to the National Migration Institute.

<sup>139</sup> Ley de Migración, Congreso General de los Estados Unidos Mexicanos, May 2011, [http://www.diputados.gob.mx/LeyesBiblio/ref/lmigra/LMigra\\_orig\\_25may11.pdf](http://www.diputados.gob.mx/LeyesBiblio/ref/lmigra/LMigra_orig_25may11.pdf).

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an effective end to asylum seekers’ claims, and even their lives. In June 25, 2019, Oscar and Valerie Martinez made headlines when they drowned in the Rio Grande river in Matamoros. The family had been living in a camp of asylum seekers near the international bridge, waiting for their asylum numbers to be called.<sup>140</sup> After a month of waiting, they grew discouraged and decided to cross the river to ask for asylum from Border Patrol agents, which is when they drowned in the swift current. Similarly, a Honduran woman and her two year old son also drowned in the Rio Grande near Ciudad Acuña after waiting in a tent camp in that city and then attempting to cross.<sup>141</sup> There are additional cases of individuals and children dying after being metered.<sup>142</sup> These asylum seekers were unable to access the U.S. asylum process in the moment when they arrived to the U.S.-Mexico border, and died before ever being able to access it.

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<sup>140</sup> Julia Le Duc, “Migrante salvadoreño y su hija mueren en el intento de cruzar a EU,” La Jornada, June 25, 2019, <https://www.jornada.com.mx/sin-fronteras/2019/06/24/migrante-salvadoreno-y-su-hija-mueren-en-el-intento-de-cruzar-a-eu-9107.html>.

<sup>141</sup> Andy Torres, “Honduran migrant and her two year old son drown while attempting to swim across the Rio Grande from Mexico to reunite with her husband and two daughters in the US,” Daily Mail, September 17, 2019, <https://www.dailymail.co.uk/news/article-7473969/Honduran-migrant-two-year-old-son-drown-attempting-swim-Mexico.html>.

<sup>142</sup> Riane Roldan, “Border Patrol searches for missing 2-year-old girl in Rio Grande,” Texas Tribune, July 3, 2019, <https://www.texastribune.org/2019/07/03/border-patrol-searches-missing-2-year-old-girl-rio-grande/>.

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87. Finally, CBP has increasingly denied access to the U.S. asylum process for Mexican nationals. CBP’s April 2018 Metering Guidance explicitly names Mexican nationals as a group that should not be stopped from entering U.S. territory, writing “DFOs should be particularly aware of any INAMI controls that are preventing U.S. citizens, LPRs, or Mexican nationals (some of whom may intend to claim fear) from entering the United States.”<sup>143</sup> However, the November 2019 Metering Report Update counted 11,040 Mexicans who had been turned back from U.S. ports of entry and were waiting at the U.S.-Mexico border, making up 52 percent of people then on asylum waitlists.<sup>144</sup> These asylum seekers were forced to wait in the very country that they are attempting to flee. In Ciudad Juárez and Matamoros, these asylum seekers have created their own separate waitlists, so as not to be in contact with Mexican government officials.<sup>145</sup>

## **VI. Conclusion**

88. Beginning in May 2016, the U.S. government began turning back asylum seekers who were arriving at ports of entry on the U.S.-Mexico border. This

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<sup>143</sup> AOL-DEF-00196460.

<sup>144</sup> “Metering Update,” Strauss Center for International Security and Law and the Center for U.S.-Mexican Studies, November 2019, [https://www.strausscenter.org/images/strauss/18-19/MSI/MeteringUpdate\\_191107.pdf](https://www.strausscenter.org/images/strauss/18-19/MSI/MeteringUpdate_191107.pdf).

<sup>145</sup> In Matamoros, the National Migration Institute runs the asylum waitlist at the Gateway Bridge. In El Paso, the State Population Council runs the asylum waitlist.

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practice began at the San Ysidro port of entry and spread relatively rapidly to the rest of the U.S.-Mexico border. By April 2018, CBP formally established this policy in a formal Metering Guidance memo that was then disseminated to CBP officers via a series of written and oral musters and standard operating procedures. Today, turn-backs on the U.S.-Mexico border are ubiquitous and systemic. Smaller ports of entry redirect asylum seekers to larger ports of entry, even though the smaller ports of entry have the ability to process asylum seekers. Larger ports of entry turn back asylum seekers, directing them to shelters and waitlists maintained on the Mexican side of the border.

89. Due to these turn-backs, asylum seekers wait for weeks, if not months, to access the U.S. asylum process, often times in dangerous conditions. CBP’s MCAT and Queue Management Reports offer a common method for determining whether capacity constraints prevented a port of entry from inspecting and processing an asylum seeker without resorting to turn-backs. Using this method, I have determined that the standardized use of turn-backs cannot be justified by capacity constraints at the majority of ports of entry.

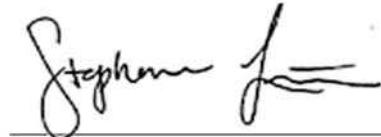
90. The data includes many instances when ports of entry reach capacity but since April 2018, these ports of entry have never used their previously-approved contingency plans that would have temporarily expanded capacity within the port of entry during times of increased migration. Additionally, metering practices and turn-

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backs have remained in place regardless of the migration level at the port of entry.

91. If metering and turn-backs were only a response to greater numbers of arriving asylum seekers, then we could expect that the limit line positions, turn-backs, and metering processes would disappear in ports of entry that were experiencing low migration numbers or had no individuals waiting in Mexico to seek entry. Yet, CBP’s documents, extensive fieldwork, the September 2019 OIG report regarding Tecate, and Gibbons testimony all illustrate that these policies continue to be in place at pedestrian ports of entry along the entire U.S. border, unchanged by the ebbs and flows of migration numbers.

Signed this 10<sup>th</sup> day of December, 2019:



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Stephanie Leutert

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<b>Report Name</b>	<b>Number of Reports</b>	<b>Date Range</b>
MCAT Daily Reports	547	11/30/2016 – 7/13/2019
Field Queue Management Reports	314	6/18/2018 – 7/15/2019

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**Table 8: Port Capacity Over Time (MCAT Reports)**

City	Date Range				
	11/30/2016 - 3/23/2018	4/2/2018 – 4/27/2018	5/4/2018 – 6/4/2018	6/5/2018 – 7/13/2019	7/7/2019 – 7/13/09
Brownsville	137	137	137	69	69
Hidalgo	54 <sup>146</sup>	54	54	42	42
Roma				16	16
Laredo	90	90	90	125	125
Eagle Pass				14	28
El Paso	226	226	306	306 / 115 <sup>147</sup>	115
Tornillo		70	85	85	85
Nogales	74	66	66	66	66
San Luis	48	48	48	48 / 35 <sup>148</sup>	35
Calexico	66	121	121	121 / 67 <sup>149</sup>	67
San Ysidro	316	316	316	316	316
Otay Mesa	.	51	51	51	51

<sup>146</sup> The capacity drops to 32 on March 23, 2018. Since this only occurs for one day, it could be an error.

<sup>147</sup> The capacity switched from to 115 on July 30, 2018.

<sup>148</sup> The capacity switched from 48 to 35 on October 31, 2018.

<sup>149</sup> The capacity switched from 121 to 67 on June 19, 2018.

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**Table 9: Days with Reported Queues at the Limit Line and Port of Entry Capacity Levels at or Below 75 Percent**

<b>City</b>	<b># of Days with Data</b>	<b># of Days with Reported Line</b>	<b># of Days with Reported Line &amp; Port Capacity at or Below 75%</b>	<b>Percent of Days with Reported Line &amp; Port Capacity at or Below 75%</b>
Laredo	313	227	226	100%
Rio Grande	312	17	17	100%
Brownsville	313	247	244	99%
Roma	313	95	94	99%
Progreso	313	105	99	94%
Del Rio	312	92	77	84%
Nogales	214	76	47	62%
Douglas	214	13	7	54%
Hidalgo	313	117	45	38%
Port of El Paso	214	123	40	33%
Eagle Pass	313	145	30	21%

**HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY****Table 10: MCAT Capacity Data (November 30, 2016 – July 19, 2019)**

	<b>Days with Data</b>	<b>0-50% Capacity</b>	<b>51-100% Capacity</b>	<b>&gt;100% Capacity</b>
Brownsville	483	92%	7%	1%
Calexico, CA	536	61%	34%	5%
El Paso	537	52%	27%	21%
Hidalgo	521	66%	17%	17%
Laredo	530	93%	7%	0%
Nogales	530	55%	41%	4%
San Luis	497	87%	13%	0%
San Ysidro	537	44%	53%	3%
Eagle Pass	220	5%	38%	57%
Otay Mesa	265	87%	11%	2%
Roma	220	73%	26%	0%
Tornillo	232	96%	3%	1%

*Total percent may not equal 100% due to rounding.*

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**Exhibit A: Current Curriculum Vitae**

**HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY****STEPHANIE LEUTERT**stephanie.leutert@utexas.edu | 239.595.1726**YALE UNIVERSITY**  
MA Global Affairs**New Haven, CT**  
2016**SKIDMORE COLLEGE**  
BA International Affairs | Spanish Literature**Saratoga Springs, NY**  
2011**STRAUSS CENTER FOR INTERNATIONAL SECURITY AND LAW****Austin, TX***Director, Central America & Mexico Policy Initiative (CAMPI)*

2017-2019

- Lead the development and programming for CAMPI and conduct original research on the U.S.-Mexico border and Central American migration.
- Head author for the first-ever border-wide report on the U.S. Customs and Border Protection’s (CBP) metering policy and asylum waitlists. Co-author on subsequent metering updates that document CBP metering practices and conditions for asylum seekers waiting in 13 Mexican border cities.
- Head researcher for a joint project with the Brooks County Sheriff’s Office in South Texas that documents migrant deaths in the area and aims to improve rescue and recovery operations for migrants who become ill or pass away while attempting to circumvent the county’s CBP checkpoint.
- Conducted original research on migrant smuggling along Mexico’s highway system and migrant kidnapping in Mexico, both of which were presented to the United Nations Office of Drugs and Crime.
- Developed a year-long research partnership with five members of Mexico’s National Security Commission about regulating Mexico’s private security sector. The results were published and presented in May 2018.
- Instructor for a MA Policy Research Project (PRP) course on Mexico’s migratory policy at the Lyndon B. Johnson School of Public Affairs. Client for 2018-2019 and 2019-2020 courses: FM4 migrant shelter in Guadalajara, Jalisco; Clients for 2017-2018 course: Sin Fronteras and the Mexican Federal Police.

*Fellow, Mexico Security Initiative*

2016-2017

- Co-instructor for a year-long PRP class on Mexico’s security policy; organized a trip to Mexico City for MA students to visit and interview government officials, civil society organizations, and journalists.
- Principal writer for “Beyond the Border” on the *Lawfare Blog*, covering migration and security policies in Mexico and Central America.

**HILLARY FOR AMERICA****Austin, TX***Administrator, Latin America Policy Working Group*

2015-2016

- Coordinated more than 80 working group members on talking points, memos, and briefings related to political and economic developments in Latin America, U.S.-Latin America relations, and Central American migration.
- Wrote talking points, policy memos, and social media posts on current events and long-term social, economic, and political trends in Latin America and potential campaign responses.
- Gathered information on Latin America and Caribbean diaspora communities for targeted messaging.

**YALE UNIVERSITY****New Haven, CT***Teaching Fellow*

2015

- Head Teaching Fellow for International Challenges in the Twenty-First Century with Dr. Jolyon Howorth in the Political Science department. Taught one section of eighteen students (Fall 2015).
- American Economic History in the Economics department with Dr. Eric Hilt. Taught two sections of fourteen students (Spring 2015).
- International Challenges in the Twenty-First Century with Dr. Jolyon Howorth in the Political Science department. Taught two sections of nineteen students (Fall 2014).

**COCA-COLA WORLD FUND****Estado de Mexico, Mexico | Chihuahua, Mexico | Sonora, Mexico**

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<i>Fellow</i>	2015
<ul style="list-style-type: none"> <li>Conducted independent field research across Estado de Mexico, Chihuahua, and Sonora on the development of Mexico’s automotive industry, supplier networks, and the ties to the United States.</li> <li>Interviewed automotive sector participants from multinational companies, suppliers, industry associations, university programs, and state governments.</li> </ul>	
<b>UKRAINIAN PARLIAMENT</b>	<b>Kyiv, Ukraine</b>
<i>Legislative Assistant to MP Olga Bielkova, Deputy Head of the Energy Committee</i>	2015
<ul style="list-style-type: none"> <li>Conducted over 20 interviews on production sharing agreements (PSAs) in Ukraine’s natural gas sector as part of the country’s ongoing energy reform.</li> <li>Wrote a policy memo that formed the basis of a Ukrainian congressional review of PSAs.</li> <li>Served as the representative of the Ukrainian Parliament’s Energy Committee in the U.S. Winter Action Plan meetings and reported the developments to high-ranking members of Parliament.</li> </ul>	
<b>FREELANCE</b>	<b>Mexico City, Mexico   New Haven, CT</b>
<i>Writer &amp; Researcher</i>	2014-2017
<ul style="list-style-type: none"> <li>Writer for op-eds and briefings on energy, economic development, and rule of law in Latin America.</li> <li>Researcher for projects related to Mexico’s 2013 energy reform for a U.S.-based boutique consulting firm.</li> <li>Conducted five weeks of independent research in Querétaro and Guanajuato on Mexico’s aerospace industry in July-August 2014.</li> </ul>	
<b>COUNCIL ON FOREIGN RELATIONS (CFR)</b>	<b>New York, NY</b>
<i>Research Associate, Latin America Studies Program</i>	2012-2014
<ul style="list-style-type: none"> <li>Researched and drafted publications on security, energy, economic, and political issues in North America and Latin America.</li> <li>Acted as the lead researcher for the 2014 CFR Task Force on North America, chaired by Ambassador Robert Zoellick and General David Petraeus. Participated in five-person research trips to Ottawa and Mexico City.</li> <li>Managed programmatic responsibilities for the Latin America Studies Program.</li> </ul>	
<b>ASYLUM ACCESS ECUADOR</b>	<b>Quito, Ecuador</b>
<i>Visiting Researcher</i>	2011
<ul style="list-style-type: none"> <li>Led a three-month research project on Ecuador’s evolving refugee policy amid tensions with Colombia.</li> <li>Organized a three-day conference in partnership with Asylum Access Ecuador, the Norwegian Refugee Council, and the UNHCR, for Colombian refugee women who experienced gender-based violence.</li> </ul>	
<b>VERITÉ</b>	<b>Amherst, MA</b>
<i>Research Intern, International Labor Law</i>	2010
<ul style="list-style-type: none"> <li>Researched and wrote reports on workers’ rights, labor law, and contract labor issues in Mexico, Peru, Chile, Colombia, Morocco, and Thailand.</li> </ul>	
<b>AFRICAN CENTER FOR TREATMENT OF TORTURE VICTIMS (ACTV)</b>	<b>Gulu, Uganda</b>
<i>Affiliated Researcher</i>	2009
<ul style="list-style-type: none"> <li>Independently designed and conducted field research on war torture perpetrated by the Ugandan military and the Lord’s Resistance Army (LRA) through interviews with NGOs and torture victims.</li> </ul>	

**CONFERENCES & MEDIA**

- Panelist, “Dying to Be Here,” Texas Tribune Festival, September 28, 2019.
- Briefer, “Visit to the Southern Border,” Inter-American Commission on Human Rights, Laredo, August 22, 2019.
- Podcast, “Understanding Mexico in the Migration Crisis,” *Trumpcast, Slate*, June 25, 2019.

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- Speaker, “The Migration Disconnect,” Wichita Committee on Foreign Relations, Wichita, March 2019.
- Panelist, “Conversatorio: Rumbo a una Política Migratoria de Estado en México,” Guadalajara, Jalisco, December 2018.
- Podcast, “The Migrant Caravan and Its Dissenters,” *Lawfare Podcast*, October 27, 2018.
- Panelist, “U.S. Immigration Policy and Family Separation,” RAICES, San Antonio, July 2018.
- Podcast, “The Other Southern Border,” *Lawfare Podcast*, June 26, 2018.
- Presenter, “Regulating Private Security in Mexico,” University of Texas at Austin, May 9, 2018.
- Presenter, “Migrant Smuggling along Mexico’s Highways,” UNODC, Florence, October 2017.
- Panelist, “Violence and Migration in Mexico,” University of Texas at Austin, September 25, 2017.
- Speaker, “Seminario Sobre Seguridad, Ciudadanía y Violencia en América Latina,” ITAM, Mexico City, April 21, 2017.
- Panelist, “Social Innovation and Humanitarian Responses,” Yale University, February 22, 2017.
- Editor in Chief, *Yale Journal of International Affairs* (2015-2016).

**PUBLICATIONS**

- Stephanie Leutert, et al. “Metering Update: November,” Strauss Center, November 2019.
- Stephanie Leutert, “In the Brush in Brooks County: Who’s Dying in South Texas?” *Lawfare Blog*, September 2019.
- Stephanie Leutert, “One County, 650 Migrant Deaths: An Introduction,” *Lawfare Blog*, September 2019.
- Stephanie Leutert, “What ‘Metering’ Really Looks Like in South Texas,” *Lawfare Blog*, July 2019.
- Stephanie Leutert, et al. “Metering Update: May,” Strauss Center, May 2019.
- Stephanie Leutert, “How Many Central Americans are Traveling North?” *Lawfare Blog*, March 2019.
- Stephanie Leutert, et al. “Metering Update: February,” Strauss Center, February 2019.
- Stephanie Leutert & Shaw Drake, “What Asylum Seekers Are Told,” *New York Times*, January 2019.
- Stephanie Leutert, et al. “Asylum Processing and Waitlists at the U.S.-Mexico Border,” Strauss Center, December 2018.
- Stephanie Leutert “The Migration Disconnect,” *Foreign Affairs*, November 2018.
- Stephanie Leutert, “Many Migrants are Victims of Crime,” *New York Times*, September 2018.
- Stephanie Leutert, “How Climate Change is Affecting Rural Hondurans,” *Washington Post*, November 2018.
- Stephanie Leutert, “Why Are So Many Migrants Leaving Guatemala? A Crisis in the Coffee Industry is One Reason,” *Time Magazine*, July 2018.
- Stephanie Leutert & Caitlyn Yates, “Migrant Kidnapping in Mexico: Regional Differences,” Strauss Center, October 2018.
- Stephanie Leutert, “The Invisible Caravans,” *Lawfare Blog*, October 2018.
- Stephanie Leutert, “Who’s Really Crossing the U.S. Border, and Why They’re Coming,” *Lawfare Blog*, July 1, 2018.
- Mexico Security Initiative and La Comisión Nacional de Seguridad de México, “Regulating the Private Security Sector in Mexico,” Strauss Center, April 2018.
- Stephanie Leutert, “The Current State of U.S.-Mexico Security Cooperation,” Strauss Center, February 2018.
- Stephanie Leutert and Caitlyn Yates, “Migrant Smuggling along Mexico’s Highway System,” Strauss Center, November 2017.
- Stephanie Leutert, “Fleeing the Storms,” *Berkeley Review of Latin America Studies*, Fall 2017.
- Stephanie Leutert, “Climate Change Induced Migration from Central America,” *Lawfare Blog*, June 21, 2017.
- Stephanie Leutert, “Border Ambassador: Rebeca Vargas,” *Americas Quarterly*, Summer 2017.
- Stephanie Leutert, “Building the Border Wall: An Update,” *Lawfare Blog*, April 19, 2017.
- Stephanie Leutert & Savitri Arvey, “Mexico’s Next Move,” *Lawfare Blog*, February 7, 2017.
- Stephanie Leutert & Savitri Arvey, “What Comes Next for Trump’s Border Wall,” *Lawfare Blog*, January 26, 2017.
- Stephanie Leutert & Antonio Garza, “Opioid-Stoked Mexican Drug Violence Again Flares Alarmingly,” *Dallas Morning News*, December 22, 2016.

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- Stephanie Leutert, “Donald Trump and the Non-Existent Two Million Criminal Immigrants,” *Lawfare Blog*, November 22, 2016.
- Stephanie Leutert, “The Migrant Kidnapping Epidemic Next Door,” *Lawfare Blog*, November 30, 2016.
- Stephanie Leutert, “Donald Trump and the Non-Existent Two Million Criminal Immigrants,” *Lawfare Blog*, November 22, 2016.
- Stephanie Leutert, “Fewer Drugs Doesn’t Necessarily Mean Less Violence,” *Lawfare Blog*, October 20, 2016.
- Stephanie Leutert, “Colombia’s Brexit Vote,” *Lawfare Blog*, October 4, 2016.
- Stephanie Leutert, “Why Central Americans Keep Coming,” *Lawfare Blog*, September 13, 2016.
- Stephanie Leutert, “Mexico’s Resurging Violence,” *Lawfare Blog*, August 29, 2016.
- Stephanie Leutert, “Homicides in Mexico: What Goes Up Does Not Necessarily Come Down,” *Lawfare Blog*, August 4, 2016.
- Stephanie Leutert, “Who’s Killing Whom in Mexico and Central America,” *Lawfare Blog*, July 27, 2016.
- Stephanie Leutert, “What is Beyond the Border,” *Lawfare Blog*, July 20, 2016.
- Stephanie Leutert, “Kyiv Dispatch: Ukraine’s Volunteer Battalions,” *Lawfare Blog*, September 1, 2015.
- Stephanie Leutert, “Kyiv Dispatch: Displaced!” *Lawfare Blog*, August 3, 2015.
- Stephanie Leutert, “Kyiv Dispatch: The View from Ukraine,” *Lawfare Blog*, July 13, 2015.
- Stephanie Leutert, “Undocumented in the Ivy League,” *Americas Quarterly*, May 2015.
- Stephanie Leutert and Alfredo Corchado, “Open Season,” *Audubon*, February 2015.
- Stephanie Leutert, “Deported or Supported,” *Princeton Journal of Public and International Affairs*, 2015.
- Stephanie Leutert, “How Many People Are We Really Deporting,” *Lawfare Blog*, January 20, 2015.
- Stephanie Leutert, “Mexico’s Aerospace Sector Takes Flight,” *CFR.org*, August 2014.
- Stephanie Leutert, “U.S. Students Are Heading to Latin America, Just Not to Mexico,” *CFR.org*, February 10, 2014.
- Stephanie Leutert & Benjamin Wittes, “On Wikipedia, Lawfare, Blogs, and Sources,” *Harvard Law School National Security Journal*, May 12, 2013.
- Stephanie Leutert, “Negotiating Peace for Displaced Persons in Colombia,” *Americas Quarterly Blog*, February 14, 2013.
- Stephanie Leutert, “Rafael Correa’s Smooth Road to Victory,” *CFR.org*, January 24, 2013.
- Stephanie Leutert, “Correa is No Chávez,” *GPS CNN*, July 31, 2012.  
Stephanie Leutert, “Ecuador’s Invisible Refugee Population,” *Americas Quarterly*, February 2012.

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**Exhibit B: Prior testimony**

In the last four years, I have not testified as an expert at trial or deposition.

**HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY****Exhibit C: Materials Considered**

In addition to the materials cited in the body of my report, I considered the following materials when forming the opinions expressed in my report.

**Pleadings**

- Plaintiffs’ Second Amended Complaint
- Defendants’ Answer to Second Amended Complaint
- Exhibit 1 to Defendants’ Answer to Second Amended Complaint

**Court Orders**

- Order Denying in Part and Granting in Part Defendants’ Motion to Dismiss Second Amended Complaint
- Amended Order Denying in Part and Granting in Part Defendants’ Motion to Dismiss Second Amended Complaint

**Discovery Requests**

- Plaintiffs’ First Set of Requests for Production
- Defendants’ Responses and Objections to Plaintiffs’ First Set of Requests for Production
- Plaintiffs’ Second Set of Requests for Production
- Defendants’ Responses and Objections to Plaintiffs’ Second Set of Requests for Production
- Plaintiffs’ Third Set of Requests for Production
- Defendants’ Responses and Objections to Plaintiffs’ Third Set of Requests for Production
- Plaintiffs’ Fourth Set of Requests for Production
- Defendants’ Responses and Objections to Plaintiffs’ Fourth Set of Requests for Production
- Plaintiffs’ Fifth Set of Requests for Production
- Defendants’ Responses and Objections to Plaintiffs’ Fifth Set of Requests for Production
- Plaintiffs’ First Set of Interrogatories
- Defendants’ Responses and Objections to Plaintiffs’ First Set of Interrogatories
- Plaintiffs’ Second Set of Interrogatories
- Defendants’ Responses and Objections to Plaintiffs’ Second Set of Interrogatories
- Plaintiffs’ First Deposition Notice

**HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY**

- Plaintiffs’ Rule 30(b)(6) Deposition Notice to CBP

**Briefs**

- Plaintiffs’ Motion for Preliminary Injunction, Brief, and Supporting Exhibits
- Defendants’ Opposition to Motion for Preliminary Injunction and Supporting Exhibits
- Plaintiffs Reply in Support of their Motion for Preliminary Injunction and Supporting Exhibits
- Plaintiffs’ Motion for Provisional Class Certification, Brief, and Supporting Exhibits
- Defendants’ Opposition to Motion for Provisional Class Certification and Supporting Exhibits
- Plaintiffs’ Reply in Support of their Motion for Provisional Class Certification and Supporting Exhibits

**Depositions and Exhibits to Depositions**

- Brandon Gibbons, November 21, 2019

**Documents**

- AOL-DEF-00010309
- AOL-DEF-00010580
- AOL-DEF-00010628
- AOL-DEF-00010630
- AOL-DEF-00010632
- AOL-DEF-00010634
- AOL-DEF-00010637
- AOL-DEF-00010640
- AOL-DEF-00010764
- AOL-DEF-00011011
- AOL-DEF-00011235
- AOL-DEF-00011371
- AOL-DEF-00011376
- AOL-DEF-00011372
- AOL-DEF-00011876
- AOL-DEF-00011883
- AOL-DEF-00012000
- AOL-DEF-00012012
- AOL-DEF-00012014

**HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY**

- AOL-DEF-00012018
- AOL-DEF-00012019
- AOL-DEF-00012020
- AOL-DEF-00012021
- AOL-DEF-00012022
- AOL-DEF-00012032
- AOL-DEF-00012033
- AOL-DEF-00012041
- AOL-DEF-00012061
- AOL-DEF-00012071
- AOL-DEF-00012081
- AOL-DEF-00012099
- AOL-DEF-00012109
- AOL-DEF-00012119
- AOL-DEF-00012129
- AOL-DEF-00012144
- AOL-DEF-00012154
- AOL-DEF-00012164
- AOL-DEF-00012175
- AOL-DEF-00012186
- AOL-DEF-00012196
- AOL-DEF-00012206
- AOL-DEF-00012217
- AOL-DEF-00012227
- AOL-DEF-00012236
- AOL-DEF-00012246
- AOL-DEF-00012256
- AOL-DEF-00012266
- AOL-DEF-00012284
- AOL-DEF-00012307
- AOL-DEF-00012317
- AOL-DEF-00012335
- AOL-DEF-00012345
- AOL-DEF-00012355
- AOL-DEF-00012365
- AOL-DEF-00012376
- AOL-DEF-00012394

**HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY**

- AOL-DEF-00012419
- AOL-DEF-00012433
- AOL-DEF-00012445
- AOL-DEF-00012457
- AOL-DEF-00012469
- AOL-DEF-00012483
- AOL-DEF-00012495
- AOL-DEF-00012506
- AOL-DEF-00012517
- AOL-DEF-00012527
- AOL-DEF-00012537
- AOL-DEF-00012548
- AOL-DEF-00012560
- AOL-DEF-00012572
- AOL-DEF-00012583
- AOL-DEF-00012594
- AOL-DEF-00012606
- AOL-DEF-00012617
- AOL-DEF-00012633
- AOL-DEF-00012643
- AOL-DEF-00012653
- AOL-DEF-00012666
- AOL-DEF-00012676
- AOL-DEF-00012685
- AOL-DEF-00012694
- AOL-DEF-00012703
- AOL-DEF-00012712
- AOL-DEF-00012721
- AOL-DEF-00012978
- AOL-DEF-00012987
- AOL-DEF-00012996
- AOL-DEF-00013005
- AOL-DEF-00013014
- AOL-DEF-00013023
- AOL-DEF-00013023
- AOL-DEF-00013041
- AOL-DEF-00013049

**HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY**

- AOL-DEF-00013052
- AOL-DEF-00013059
- AOL-DEF-00013071
- AOL-DEF-00013075
- AOL-DEF-00013085
- AOL-DEF-00013090
- AOL-DEF-00013103
- AOL-DEF-00013107
- AOL-DEF-00013110
- AOL-DEF-00013116
- AOL-DEF-00013122
- AOL-DEF-00013128
- AOL-DEF-00013141
- AOL-DEF-00013155
- AOL-DEF-00013160
- AOL-DEF-00013164
- AOL-DEF-00013168
- AOL-DEF-00013179
- AOL-DEF-00013189
- AOL-DEF-00013194
- AOL-DEF-00013209
- AOL-DEF-00013215
- AOL-DEF-00013229
- AOL-DEF-00013232
- AOL-DEF-00013235
- AOL-DEF-00013238
- AOL-DEF-00013241
- AOL-DEF-00013244
- AOL-DEF-00013869
- AOL-DEF-00013871
- AOL-DEF-00013889
- AOL-DEF-00013906
- AOL-DEF-00013908
- AOL-DEF-00013924
- AOL-DEF-00013926
- AOL-DEF-00013930
- AOL-DEF-00013932

**HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY**

- AOL-DEF-00014010
- AOL-DEF-00014030
- AOL-DEF-00014033
- AOL-DEF-00014038
- AOL-DEF-00014041
- AOL-DEF-00014136
- AOL-DEF-00014173
- AOL-DEF-00014547
- AOL-DEF-00014659
- AOL-DEF-00014669
- AOL-DEF-00014682
- AOL-DEF-00014717
- AOL-DEF-00014720
- AOL-DEF-00014724
- AOL-DEF-00014762
- AOL-DEF-00014832
- AOL-DEF-00014854
- AOL-DEF-00014870
- AOL-DEF-00014875
- AOL-DEF-00014878
- AOL-DEF-00014881
- AOL-DEF-00014893
- AOL-DEF-00014895
- AOL-DEF-00014909
- AOL-DEF-00014922
- AOL-DEF-00014925
- AOL-DEF-00014942
- AOL-DEF-00014963
- AOL-DEF-00014977
- AOL-DEF-00014996
- AOL-DEF-00015339
- AOL-DEF-00016004
- AOL-DEF-00016564
- AOL-DEF-00016577
- AOL-DEF-00016589
- AOL-DEF-00016601
- AOL-DEF-00016631

**HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY**

- AOL-DEF-00016643
- AOL-DEF-00016653
- AOL-DEF-00016665
- AOL-DEF-00016672
- AOL-DEF-00016683
- AOL-DEF-00016691
- AOL-DEF-00016705
- AOL-DEF-00016715
- AOL-DEF-00016723
- AOL-DEF-00016733
- AOL-DEF-00016735
- AOL-DEF-00016773
- AOL-DEF-00016774
- AOL-DEF-00016777
- AOL-DEF-00016779
- AOL-DEF-00016780
- AOL-DEF-00016781
- AOL-DEF-00016782
- AOL-DEF-00016813
- AOL-DEF-00016820
- AOL-DEF-00016823
- AOL-DEF-00016828
- AOL-DEF-00016831
- AOL-DEF-00016836
- AOL-DEF-00016839
- AOL-DEF-00016844
- AOL-DEF-00016847
- AOL-DEF-00016852
- AOL-DEF-00016855
- AOL-DEF-00016860
- AOL-DEF-00016863
- AOL-DEF-00016870
- AOL-DEF-00016874
- AOL-DEF-00016875
- AOL-DEF-00016876
- AOL-DEF-00016877
- AOL-DEF-00016880

**HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY**

- AOL-DEF-00016888
- AOL-DEF-00016891
- AOL-DEF-00016896
- AOL-DEF-00016899
- AOL-DEF-00016923
- AOL-DEF-00016926
- AOL-DEF-00016931
- AOL-DEF-00016934
- AOL-DEF-00016939
- AOL-DEF-00016942
- AOL-DEF-00016947
- AOL-DEF-00016950
- AOL-DEF-00016960
- AOL-DEF-00016963
- AOL-DEF-00016974
- AOL-DEF-00016977
- AOL-DEF-00016992
- AOL-DEF-00016995
- AOL-DEF-00017000
- AOL-DEF-00017003
- AOL-DEF-00017008
- AOL-DEF-00017011
- AOL-DEF-00017016
- AOL-DEF-00017019
- AOL-DEF-00017099
- AOL-DEF-00017102
- AOL-DEF-00017163
- AOL-DEF-00017168
- AOL-DEF-00017175
- AOL-DEF-00017177
- AOL-DEF-00017208
- AOL-DEF-00017213
- AOL-DEF-00017241
- AOL-DEF-00017246
- AOL-DEF-00017355
- AOL-DEF-00017358
- AOL-DEF-00017365

**HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY**

- AOL-DEF-00017367
- AOL-DEF-00017374
- AOL-DEF-00017376
- AOL-DEF-00017383
- AOL-DEF-00017385
- AOL-DEF-00017392
- AOL-DEF-00017395
- AOL-DEF-00017400
- AOL-DEF-00017401
- AOL-DEF-00017402
- AOL-DEF-00017407
- AOL-DEF-00017414
- AOL-DEF-00017417
- AOL-DEF-00017424
- AOL-DEF-00017426
- AOL-DEF-00017434
- AOL-DEF-00017437
- AOL-DEF-00017444
- AOL-DEF-00017448
- AOL-DEF-00017455
- AOL-DEF-00017460
- AOL-DEF-00017467
- AOL-DEF-00017470
- AOL-DEF-00017517
- AOL-DEF-00017521
- AOL-DEF-00017528
- AOL-DEF-00017531
- AOL-DEF-00017539
- AOL-DEF-00017542
- AOL-DEF-00017551
- AOL-DEF-00017553
- AOL-DEF-00017568
- AOL-DEF-00017576
- AOL-DEF-00017581
- AOL-DEF-00017586
- AOL-DEF-00017588
- AOL-DEF-00017595

**HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY**

- AOL-DEF-00017600
- AOL-DEF-00017605
- AOL-DEF-00017610
- AOL-DEF-00017615
- AOL-DEF-00017620
- AOL-DEF-00017625
- AOL-DEF-00017630
- AOL-DEF-00017635
- AOL-DEF-00017641
- AOL-DEF-00017646
- AOL-DEF-00017652
- AOL-DEF-00017657
- AOL-DEF-00017662
- AOL-DEF-00017667
- AOL-DEF-00017672
- AOL-DEF-00017677
- AOL-DEF-00017682
- AOL-DEF-00017687
- AOL-DEF-00017692
- AOL-DEF-00017697
- AOL-DEF-00017702
- AOL-DEF-00017707
- AOL-DEF-00017712
- AOL-DEF-00017717
- AOL-DEF-00017722
- AOL-DEF-00017727
- AOL-DEF-00017732
- AOL-DEF-00017737
- AOL-DEF-00017742
- AOL-DEF-00017747
- AOL-DEF-00017751
- AOL-DEF-00017761
- AOL-DEF-00017766
- AOL-DEF-00017771
- AOL-DEF-00017776
- AOL-DEF-00017781
- AOL-DEF-00017786

**HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY**

- AOL-DEF-00017791
- AOL-DEF-00017796
- AOL-DEF-00017801
- AOL-DEF-00017807
- AOL-DEF-00017812
- AOL-DEF-00017817
- AOL-DEF-00017822
- AOL-DEF-00017827
- AOL-DEF-00017832
- AOL-DEF-00017837
- AOL-DEF-00017842
- AOL-DEF-00017847
- AOL-DEF-00017852
- AOL-DEF-00017857
- AOL-DEF-00017862
- AOL-DEF-00017867
- AOL-DEF-00017872
- AOL-DEF-00017877
- AOL-DEF-00017882
- AOL-DEF-00017887
- AOL-DEF-00017892
- AOL-DEF-00017897
- AOL-DEF-00017902
- AOL-DEF-00017907
- AOL-DEF-00017912
- AOL-DEF-00017917
- AOL-DEF-00017922
- AOL-DEF-00017927
- AOL-DEF-00017932
- AOL-DEF-00017937
- AOL-DEF-00017942
- AOL-DEF-00017947
- AOL-DEF-00017952
- AOL-DEF-00017957
- AOL-DEF-00017962
- AOL-DEF-00017967
- AOL-DEF-00017972

**HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY**

- AOL-DEF-00017977
- AOL-DEF-00017982
- AOL-DEF-00017987
- AOL-DEF-00017992
- AOL-DEF-00017997
- AOL-DEF-00018002
- AOL-DEF-00018009
- AOL-DEF-00018014
- AOL-DEF-00018019
- AOL-DEF-00018024
- AOL-DEF-00018029
- AOL-DEF-00018034
- AOL-DEF-00018039
- AOL-DEF-00018044
- AOL-DEF-00018049
- AOL-DEF-00018054
- AOL-DEF-00018059
- AOL-DEF-00018064
- AOL-DEF-00018069
- AOL-DEF-00018074
- AOL-DEF-00018079
- AOL-DEF-00018084
- AOL-DEF-00018087
- AOL-DEF-00018089
- AOL-DEF-00018094
- AOL-DEF-00018099
- AOL-DEF-00018104
- AOL-DEF-00018109
- AOL-DEF-00018114
- AOL-DEF-00018119
- AOL-DEF-00018124
- AOL-DEF-00018129
- AOL-DEF-00018134
- AOL-DEF-00018139
- AOL-DEF-00018144
- AOL-DEF-00018149
- AOL-DEF-00018154

**HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY**

- AOL-DEF-00018159
- AOL-DEF-00018164
- AOL-DEF-00018169
- AOL-DEF-00018174
- AOL-DEF-00018179
- AOL-DEF-00018184
- AOL-DEF-00018189
- AOL-DEF-00018194
- AOL-DEF-00018199
- AOL-DEF-00018204
- AOL-DEF-00018209
- AOL-DEF-00018212
- AOL-DEF-00018219
- AOL-DEF-00018224
- AOL-DEF-00018229
- AOL-DEF-00018234
- AOL-DEF-00018239
- AOL-DEF-00018244
- AOL-DEF-00018249
- AOL-DEF-00018254
- AOL-DEF-00018259
- AOL-DEF-00018264
- AOL-DEF-00018269
- AOL-DEF-00018276
- AOL-DEF-00018281
- AOL-DEF-00018286
- AOL-DEF-00018291
- AOL-DEF-00018296
- AOL-DEF-00018301
- AOL-DEF-00018306
- AOL-DEF-00018311
- AOL-DEF-00018313
- AOL-DEF-00018315
- AOL-DEF-00018317
- AOL-DEF-00018345
- AOL-DEF-00018347
- AOL-DEF-00018353

**HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY**

- AOL-DEF-00018355
- AOL-DEF-00018362
- AOL-DEF-00018364
- AOL-DEF-00018388
- AOL-DEF-00018399
- AOL-DEF-00018401
- AOL-DEF-00018406
- AOL-DEF-00018408
- AOL-DEF-00018414
- AOL-DEF-00019150
- AOL-DEF-00019162
- AOL-DEF-00019285
- AOL-DEF-00019307
- AOL-DEF-00019314
- AOL-DEF-00019375
- AOL-DEF-00019403
- AOL-DEF-00019435
- AOL-DEF-00019447
- AOL-DEF-00019452
- AOL-DEF-00019468
- AOL-DEF-00019495
- AOL-DEF-00019505
- AOL-DEF-00019524
- AOL-DEF-00019542
- AOL-DEF-00019571
- AOL-DEF-00019689
- AOL-DEF-00019876
- AOL-DEF-00019898
- AOL-DEF-00019923
- AOL-DEF-00019950
- AOL-DEF-00019965
- AOL-DEF-00020023
- AOL-DEF-00020113
- AOL-DEF-00020130
- AOL-DEF-00020147
- AOL-DEF-00020168
- AOL-DEF-00020196

**HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY**

- AOL-DEF-00020215
- AOL-DEF-00020254
- AOL-DEF-00020272
- AOL-DEF-00020290
- AOL-DEF-00020308
- AOL-DEF-00020326
- AOL-DEF-00020385
- AOL-DEF-00020406
- AOL-DEF-00020426
- AOL-DEF-00020445
- AOL-DEF-00020463
- AOL-DEF-00020481
- AOL-DEF-00020499
- AOL-DEF-00020520
- AOL-DEF-00020538
- AOL-DEF-00020557
- AOL-DEF-00020575
- AOL-DEF-00020594
- AOL-DEF-00020612
- AOL-DEF-00020630
- AOL-DEF-00020648
- AOL-DEF-00020666
- AOL-DEF-00020685
- AOL-DEF-00020704
- AOL-DEF-00020722
- AOL-DEF-00020740
- AOL-DEF-00020758
- AOL-DEF-00020776
- AOL-DEF-00020794
- AOL-DEF-00020812
- AOL-DEF-00020831
- AOL-DEF-00020849
- AOL-DEF-00020867
- AOL-DEF-00020885
- AOL-DEF-00020903
- AOL-DEF-00020921
- AOL-DEF-00020940

**HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY**

- AOL-DEF-00020959
- AOL-DEF-00020977
- AOL-DEF-00020995
- AOL-DEF-00021013
- AOL-DEF-00021031
- AOL-DEF-00021050
- AOL-DEF-00021068
- AOL-DEF-00021087
- AOL-DEF-00021105
- AOL-DEF-00021125
- AOL-DEF-00021144
- AOL-DEF-00021162
- AOL-DEF-00021181
- AOL-DEF-00021199
- AOL-DEF-00021219
- AOL-DEF-00021237
- AOL-DEF-00021255
- AOL-DEF-00021275
- AOL-DEF-00021293
- AOL-DEF-00021312
- AOL-DEF-00021331
- AOL-DEF-00021350
- AOL-DEF-00021369
- AOL-DEF-00021387
- AOL-DEF-00022783
- AOL-DEF-00023095
- AOL-DEF-00027364
- AOL-DEF-00027464
- AOL-DEF-00028451
- AOL-DEF-00028455
- AOL-DEF-00028457
- AOL-DEF-00032387
- AOL-DEF-00032389
- AOL-DEF-00034787
- AOL-DEF-00036001
- AOL-DEF-00036004
- AOL-DEF-00036343

**HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY**

- AOL-DEF-00036355
- AOL-DEF-00038275
- AOL-DEF-00038916
- AOL-DEF-00038921
- AOL-DEF-00038923
- AOL-DEF-00038925
- AOL-DEF-00038927
- AOL-DEF-00038929
- AOL-DEF-00038931
- AOL-DEF-00039125
- AOL-DEF-00039580
- AOL-DEF-00039582
- AOL-DEF-00040299
- AOL-DEF-00040302
- AOL-DEF-00040333
- AOL-DEF-00040336
- AOL-DEF-00041176
- AOL-DEF-00042399
- AOL-DEF-00042510
- AOL-DEF-00042648
- AOL-DEF-00042759
- AOL-DEF-00044050
- AOL-DEF-00050864
- AOL-DEF-00053043
- AOL-DEF-00053062
- AOL-DEF-00053073
- AOL-DEF-00053593
- AOL-DEF-00053604
- AOL-DEF-00053764
- AOL-DEF-00054004
- AOL-DEF-00054017
- AOL-DEF-00054227
- AOL-DEF-00054402
- AOL-DEF-00054409
- AOL-DEF-00054418
- AOL-DEF-00055146
- AOL-DEF-00055183

**HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY**

- AOL-DEF-00055211
- AOL-DEF-00055423
- AOL-DEF-00055468
- AOL-DEF-00055481
- AOL-DEF-00055496
- AOL-DEF-00056071
- AOL-DEF-00056080
- AOL-DEF-00056089
- AOL-DEF-00056098
- AOL-DEF-00056108
- AOL-DEF-00056224
- AOL-DEF-00056233
- AOL-DEF-00056293
- AOL-DEF-00056302
- AOL-DEF-00056328
- AOL-DEF-00056341
- AOL-DEF-00056574
- AOL-DEF-00056803
- AOL-DEF-00056823
- AOL-DEF-00056832
- AOL-DEF-00056858
- AOL-DEF-00057073
- AOL-DEF-00057083
- AOL-DEF-00057095
- AOL-DEF-00057105
- AOL-DEF-00057111
- AOL-DEF-00057127
- AOL-DEF-00057469
- AOL-DEF-00058870
- AOL-DEF-00058873
- AOL-DEF-00058897
- AOL-DEF-00058900
- AOL-DEF-00058927
- AOL-DEF-00058954
- AOL-DEF-00059045
- AOL-DEF-00059291
- AOL-DEF-00059330

**HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY**

- AOL-DEF-00059486
- AOL-DEF-00059496
- AOL-DEF-00059531
- AOL-DEF-00059808
- AOL-DEF-00059884
- AOL-DEF-00059886
- AOL-DEF-00060550
- AOL-DEF-00060618
- AOL-DEF-00060687
- AOL-DEF-00060695
- AOL-DEF-00060705
- AOL-DEF-00060742
- AOL-DEF-00060789
- AOL-DEF-00060799
- AOL-DEF-00060811
- AOL-DEF-00060821
- AOL-DEF-00060830
- AOL-DEF-00060839
- AOL-DEF-00060848
- AOL-DEF-00060857
- AOL-DEF-00060866
- AOL-DEF-00060875
- AOL-DEF-00060883
- AOL-DEF-00060901
- AOL-DEF-00060910
- AOL-DEF-00060919
- AOL-DEF-00060928
- AOL-DEF-00060971
- AOL-DEF-00060980
- AOL-DEF-00060989
- AOL-DEF-00060742
- AOL-DEF-00061006
- AOL-DEF-00061292
- AOL-DEF-00061301
- AOL-DEF-00061312
- AOL-DEF-00061327
- AOL-DEF-00061644

**HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY**

- AOL-DEF-00061655
- AOL-DEF-00061664
- AOL-DEF-00061678
- AOL-DEF-00061687
- AOL-DEF-00061696
- AOL-DEF-00061709
- AOL-DEF-00061734
- AOL-DEF-00061744
- AOL-DEF-00061754
- AOL-DEF-00061763
- AOL-DEF-00061788
- AOL-DEF-00061813
- AOL-DEF-00061822
- AOL-DEF-00061847
- AOL-DEF-00067434
- AOL-DEF-00068394
- AOL-DEF-00068969
- AOL-DEF-00069311
- AOL-DEF-00069317
- AOL-DEF-00069350
- AOL-DEF-00069370
- AOL-DEF-00069622
- AOL-DEF-00069799
- AOL-DEF-00069802
- AOL-DEF-00069817
- AOL-DEF-00069819
- AOL-DEF-00069838
- AOL-DEF-00069840
- AOL-DEF-00070496
- AOL-DEF-00070472
- AOL-DEF-00070511
- AOL-DEF-00070514
- AOL-DEF-00070558
- AOL-DEF-00070599
- AOL-DEF-00070606
- AOL-DEF-00070608
- AOL-DEF-00070622

**HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY**

- AOL-DEF-00070624
- AOL-DEF-00070663
- AOL-DEF-00070665
- AOL-DEF-00070679
- AOL-DEF-00070698
- AOL-DEF-00070700
- AOL-DEF-00070702
- AOL-DEF-00070768
- AOL-DEF-00070825
- AOL-DEF-00070982
- AOL-DEF-00070991
- AOL-DEF-00070995
- AOL-DEF-00070998
- AOL-DEF-00071011
- AOL-DEF-00071015
- AOL-DEF-00071136
- AOL-DEF-00071142
- AOL-DEF-00071149
- AOL-DEF-00071160
- AOL-DEF-00071202
- AOL-DEF-00071602
- AOL-DEF-00071651
- AOL-DEF-00073971
- AOL-DEF-00074023
- AOL-DEF-00074027
- AOL-DEF-00075871
- AOL-DEF-00075874
- AOL-DEF-00075901
- AOL-DEF-00075904
- AOL-DEF-00075931
- AOL-DEF-00075934
- AOL-DEF-00075959
- AOL-DEF-00075962
- AOL-DEF-00075989
- AOL-DEF-00075992
- AOL-DEF-00076017
- AOL-DEF-00076020

**HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY**

- AOL-DEF-00076045
- AOL-DEF-00076048
- AOL-DEF-00076074
- AOL-DEF-00076077
- AOL-DEF-00076105
- AOL-DEF-00076108
- AOL-DEF-00076133
- AOL-DEF-00076136
- AOL-DEF-00076164
- AOL-DEF-00076167
- AOL-DEF-00076193
- AOL-DEF-00076196
- AOL-DEF-00076221
- AOL-DEF-00076224
- AOL-DEF-00076247
- AOL-DEF-00076250
- AOL-DEF-00076274
- AOL-DEF-00076277
- AOL-DEF-00076301
- AOL-DEF-00076304
- AOL-DEF-00076315
- AOL-DEF-00076318
- AOL-DEF-00076331
- AOL-DEF-00076334
- AOL-DEF-00076361
- AOL-DEF-00076364
- AOL-DEF-00076390
- AOL-DEF-00076393
- AOL-DEF-00076416
- AOL-DEF-00076418
- AOL-DEF-00076441
- AOL-DEF-00076443
- AOL-DEF-00076466
- AOL-DEF-00076468
- AOL-DEF-00076491
- AOL-DEF-00076495
- AOL-DEF-00076523

**HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY**

- AOL-DEF-00076525
- AOL-DEF-00076551
- AOL-DEF-00076553
- AOL-DEF-00076579
- AOL-DEF-00076582
- AOL-DEF-00076606
- AOL-DEF-00076609
- AOL-DEF-00076633
- AOL-DEF-00076636
- AOL-DEF-00076660
- AOL-DEF-00076663
- AOL-DEF-00076687
- AOL-DEF-00076690
- AOL-DEF-00076714
- AOL-DEF-00076717
- AOL-DEF-00076741
- AOL-DEF-00076744
- AOL-DEF-00076768
- AOL-DEF-00076771
- AOL-DEF-00076795
- AOL-DEF-00076798
- AOL-DEF-00076822
- AOL-DEF-00076825
- AOL-DEF-00076850
- AOL-DEF-00076852
- AOL-DEF-00076867
- AOL-DEF-00076894
- AOL-DEF-00076925
- AOL-DEF-00076954
- AOL-DEF-00076981
- AOL-DEF-00076999
- AOL-DEF-00077002
- AOL-DEF-00077021
- AOL-DEF-00077048
- AOL-DEF-00077074
- AOL-DEF-00077090
- AOL-DEF-00077106

**HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY**

- AOL-DEF-00077138
- AOL-DEF-00078009
- AOL-DEF-00078076
- AOL-DEF-00078093
- AOL-DEF-00078111
- AOL-DEF-00078128
- AOL-DEF-00078145
- AOL-DEF-00078162
- AOL-DEF-00078179
- AOL-DEF-00078196
- AOL-DEF-00078213
- AOL-DEF-00078230
- AOL-DEF-00078247
- AOL-DEF-00078264
- AOL-DEF-00078282
- AOL-DEF-00078299
- AOL-DEF-00078315
- AOL-DEF-00078316
- AOL-DEF-00078332
- AOL-DEF-00078333
- AOL-DEF-00078351
- AOL-DEF-00078370
- AOL-DEF-00078390
- AOL-DEF-00078412
- AOL-DEF-00078434
- AOL-DEF-00078477
- AOL-DEF-00078500
- AOL-DEF-00078524
- AOL-DEF-00078547
- AOL-DEF-00078571
- AOL-DEF-00078591
- AOL-DEF-00078611
- AOL-DEF-00078631
- AOL-DEF-00078651
- AOL-DEF-00078671
- AOL-DEF-00078691
- AOL-DEF-00078714

**HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY**

- AOL-DEF-00078741
- AOL-DEF-00078769
- AOL-DEF-00078797
- AOL-DEF-00078825
- AOL-DEF-00078870
- AOL-DEF-00078915
- AOL-DEF-00078937
- AOL-DEF-00078959
- AOL-DEF-00078980
- AOL-DEF-00079003
- AOL-DEF-00079030
- AOL-DEF-00079079
- AOL-DEF-00079126
- AOL-DEF-00079157
- AOL-DEF-00079188
- AOL-DEF-00079219
- AOL-DEF-00079247
- AOL-DEF-00079276
- AOL-DEF-00079304
- AOL-DEF-00079395
- AOL-DEF-00079582
- AOL-DEF-00079642
- AOL-DEF-00079645
- AOL-DEF-00079707
- AOL-DEF-00079736
- AOL-DEF-00079754
- AOL-DEF-00079777
- AOL-DEF-00079795
- AOL-DEF-00079818
- AOL-DEF-00079853
- AOL-DEF-00079871
- AOL-DEF-00079889
- AOL-DEF-00079907
- AOL-DEF-00079925
- AOL-DEF-00079943
- AOL-DEF-00079961
- AOL-DEF-00079980

**HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY**

- AOL-DEF-00079999
- AOL-DEF-00080017
- AOL-DEF-00080035
- AOL-DEF-00080053
- AOL-DEF-00080071
- AOL-DEF-00080094
- AOL-DEF-00080111
- AOL-DEF-00080128
- AOL-DEF-00080145
- AOL-DEF-00080162
- AOL-DEF-00080179
- AOL-DEF-00080200
- AOL-DEF-00080217
- AOL-DEF-00080235
- AOL-DEF-00080254
- AOL-DEF-00080272
- AOL-DEF-00080290
- AOL-DEF-00080307
- AOL-DEF-00080324
- AOL-DEF-00080344
- AOL-DEF-00080362
- AOL-DEF-00080379
- AOL-DEF-00080396
- AOL-DEF-00080414
- AOL-DEF-00080433
- AOL-DEF-00080450
- AOL-DEF-00080472
- AOL-DEF-00080589
- AOL-DEF-00080608
- AOL-DEF-00080625
- AOL-DEF-00080642
- AOL-DEF-00080659
- AOL-DEF-00080676
- AOL-DEF-00080693
- AOL-DEF-00080710
- AOL-DEF-00080727
- AOL-DEF-00080744

**HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY**

- AOL-DEF-00080761
- AOL-DEF-00080778
- AOL-DEF-00080795
- AOL-DEF-00080813
- AOL-DEF-00080830
- AOL-DEF-00080847
- AOL-DEF-00080865
- AOL-DEF-00080882
- AOL-DEF-00080901
- AOL-DEF-00080922
- AOL-DEF-00080940
- AOL-DEF-00080959
- AOL-DEF-00080977
- AOL-DEF-00080997
- AOL-DEF-00081091
- AOL-DEF-00081104
- AOL-DEF-00081124
- AOL-DEF-00081164
- AOL-DEF-00081178
- AOL-DEF-00081210
- AOL-DEF-00081241
- AOL-DEF-00081418
- AOL-DEF-00081429
- AOL-DEF-00081536
- AOL-DEF-00081548
- AOL-DEF-00081557
- AOL-DEF-00081580
- AOL-DEF-00081589
- AOL-DEF-00081648
- AOL-DEF-00081677
- AOL-DEF-00081765
- AOL-DEF-00081774
- AOL-DEF-00081791
- AOL-DEF-00081843
- AOL-DEF-00081855
- AOL-DEF-00081864
- AOL-DEF-00081879

**HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY**

- AOL-DEF-00081894
- AOL-DEF-00081939
- AOL-DEF-00081948
- AOL-DEF-00081966
- AOL-DEF-00081975
- AOL-DEF-00081989
- AOL-DEF-00081998
- AOL-DEF-00082007
- AOL-DEF-00082022
- AOL-DEF-00082044
- AOL-DEF-00082063
- AOL-DEF-00082074
- AOL-DEF-00082085
- AOL-DEF-00082096
- AOL-DEF-00082107
- AOL-DEF-00082144
- AOL-DEF-00082230
- AOL-DEF-00082241
- AOL-DEF-00082263
- AOL-DEF-00082283
- AOL-DEF-00082294
- AOL-DEF-00082303
- AOL-DEF-00082316
- AOL-DEF-00082330
- AOL-DEF-00082361
- AOL-DEF-00082370
- AOL-DEF-00082384
- AOL-DEF-00082395
- AOL-DEF-00082407
- AOL-DEF-00082421
- AOL-DEF-00082430
- AOL-DEF-00082489
- AOL-DEF-00082504
- AOL-DEF-00082525
- AOL-DEF-00082549
- AOL-DEF-00082591
- AOL-DEF-00082640

**HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY**

- AOL-DEF-00082657
- AOL-DEF-00082674
- AOL-DEF-00082691
- AOL-DEF-00082697
- AOL-DEF-00082708
- AOL-DEF-00082723
- AOL-DEF-00082732
- AOL-DEF-00082741
- AOL-DEF-00082750
- AOL-DEF-00082771
- AOL-DEF-00082780
- AOL-DEF-00082789
- AOL-DEF-00082798
- AOL-DEF-00082807
- AOL-DEF-00082818
- AOL-DEF-00082841
- AOL-DEF-00082849
- AOL-DEF-00082852
- AOL-DEF-00082861
- AOL-DEF-00082867
- AOL-DEF-00082876
- AOL-DEF-00082885
- AOL-DEF-00082902
- AOL-DEF-00082911
- AOL-DEF-00082925
- AOL-DEF-00082938
- AOL-DEF-00082947
- AOL-DEF-00082956
- AOL-DEF-00082980
- AOL-DEF-00083005
- AOL-DEF-00083022
- AOL-DEF-00083041
- AOL-DEF-00083053
- AOL-DEF-00083065
- AOL-DEF-00083075
- AOL-DEF-00083084
- AOL-DEF-00083093

**HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY**

- AOL-DEF-00083126
- AOL-DEF-00083135
- AOL-DEF-00083144
- AOL-DEF-00083153
- AOL-DEF-00083162
- AOL-DEF-00083174
- AOL-DEF-00083196
- AOL-DEF-00084777
- AOL-DEF-00084791
- AOL-DEF-00084792
- AOL-DEF-00085652
- AOL-DEF-00085679
- AOL-DEF-00085682
- AOL-DEF-00085685
- AOL-DEF-00085700
- AOL-DEF-00085718
- AOL-DEF-00085738
- AOL-DEF-00085757
- AOL-DEF-00085767
- AOL-DEF-00085786
- AOL-DEF-00085820
- AOL-DEF-00085836
- AOL-DEF-00085865
- AOL-DEF-00085890
- AOL-DEF-00085906
- AOL-DEF-00085916
- AOL-DEF-00085929
- AOL-DEF-00085953
- AOL-DEF-00085977
- AOL-DEF-00086029
- AOL-DEF-00086046
- AOL-DEF-00086082
- AOL-DEF-00086117
- AOL-DEF-00086149
- AOL-DEF-00086162
- AOL-DEF-00086190
- AOL-DEF-00086222

**HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY**

- AOL-DEF-00086284
- AOL-DEF-00086297
- AOL-DEF-00086313
- AOL-DEF-00086326
- AOL-DEF-00086339
- AOL-DEF-00086353
- AOL-DEF-00086367
- AOL-DEF-00086382
- AOL-DEF-00086455
- AOL-DEF-00086468
- AOL-DEF-00086530
- AOL-DEF-00086596
- AOL-DEF-00086640
- AOL-DEF-00086662
- AOL-DEF-00086775
- AOL-DEF-00086807
- AOL-DEF-00086862
- AOL-DEF-00086887
- AOL-DEF-00086900
- AOL-DEF-00086969
- AOL-DEF-00087003
- AOL-DEF-00087013
- AOL-DEF-00087023
- AOL-DEF-00087047
- AOL-DEF-00087060
- AOL-DEF-00087124
- AOL-DEF-00087137
- AOL-DEF-00087160
- AOL-DEF-00087171
- AOL-DEF-00087181
- AOL-DEF-00087214
- AOL-DEF-00087254
- AOL-DEF-00087286
- AOL-DEF-00087303
- AOL-DEF-00087313
- AOL-DEF-00087386
- AOL-DEF-00087429

**HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY**

- AOL-DEF-00087449
- AOL-DEF-00087473
- AOL-DEF-00087531
- AOL-DEF-00087545
- AOL-DEF-00087550
- AOL-DEF-00087608
- AOL-DEF-00087623
- AOL-DEF-00087670
- AOL-DEF-00087710
- AOL-DEF-00087720
- AOL-DEF-00087744
- AOL-DEF-00087826
- AOL-DEF-00087855
- AOL-DEF-00087872
- AOL-DEF-00087916
- AOL-DEF-00087926
- AOL-DEF-00087950
- AOL-DEF-00087960
- AOL-DEF-00088147
- AOL-DEF-00088189
- AOL-DEF-00088202
- AOL-DEF-00088244
- AOL-DEF-00088261
- AOL-DEF-00088282
- AOL-DEF-00088299
- AOL-DEF-00088309
- AOL-DEF-00088325
- AOL-DEF-00088335
- AOL-DEF-00088345
- AOL-DEF-00088355
- AOL-DEF-00088373
- AOL-DEF-00088390
- AOL-DEF-00088393
- AOL-DEF-00088416
- AOL-DEF-00088443
- AOL-DEF-00088460
- AOL-DEF-00088501

**HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY**

- AOL-DEF-00089373
- AOL-DEF-00089377
- AOL-DEF-00089396
- AOL-DEF-00089408
- AOL-DEF-00089424
- AOL-DEF-00089440
- AOL-DEF-00089489
- AOL-DEF-00089966
- AOL-DEF-00089993
- AOL-DEF-00090040
- AOL-DEF-00090106
- AOL-DEF-00090108
- AOL-DEF-00090586
- AOL-DEF-00090904
- AOL-DEF-00091712
- AOL-DEF-00091858
- AOL-DEF-00091962
- AOL-DEF-00091965
- AOL-DEF-00095091
- AOL-DEF-00095092
- AOL-DEF-00095498
- AOL-DEF-00095672
- AOL-DEF-00095711
- AOL-DEF-00095714
- AOL-DEF-00095731
- AOL-DEF-00095734
- AOL-DEF-00095740
- AOL-DEF-00095743
- AOL-DEF-00095747
- AOL-DEF-00095749
- AOL-DEF-00095752
- AOL-DEF-00095756
- AOL-DEF-00095759
- AOL-DEF-00095762
- AOL-DEF-00095765
- AOL-DEF-00095768
- AOL-DEF-00095773

**HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY**

- AOL-DEF-00095776
- AOL-DEF-00095779
- AOL-DEF-00095782
- AOL-DEF-00095785
- AOL-DEF-00095788
- AOL-DEF-00095791
- AOL-DEF-00095794
- AOL-DEF-00095797
- AOL-DEF-00095801
- AOL-DEF-00095804
- AOL-DEF-00095807
- AOL-DEF-00095810
- AOL-DEF-00095813
- AOL-DEF-00095818
- AOL-DEF-00095821
- AOL-DEF-00095824
- AOL-DEF-00095829
- AOL-DEF-00095834
- AOL-DEF-00095837
- AOL-DEF-00095840
- AOL-DEF-00095842
- AOL-DEF-00095844
- AOL-DEF-00095847
- AOL-DEF-00095849
- AOL-DEF-00095851
- AOL-DEF-00095853
- AOL-DEF-00095855
- AOL-DEF-00095857
- AOL-DEF-00095859
- AOL-DEF-00095862
- AOL-DEF-00095865
- AOL-DEF-00095868
- AOL-DEF-00095871
- AOL-DEF-00095873
- AOL-DEF-00095876
- AOL-DEF-00095879
- AOL-DEF-00095882

**HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY**

- AOL-DEF-00095884
- AOL-DEF-00095887
- AOL-DEF-00095889
- AOL-DEF-00095892
- AOL-DEF-00095894
- AOL-DEF-00095896
- AOL-DEF-00095898
- AOL-DEF-00095900
- AOL-DEF-00095902
- AOL-DEF-00095904
- AOL-DEF-00095906
- AOL-DEF-00095908
- AOL-DEF-00095911
- AOL-DEF-00095913
- AOL-DEF-00095915
- AOL-DEF-00095917
- AOL-DEF-00095925
- AOL-DEF-00095927
- AOL-DEF-00095930
- AOL-DEF-00096079
- AOL-DEF-00096106
- AOL-DEF-00096133
- AOL-DEF-00096160
- AOL-DEF-00096186
- AOL-DEF-00096214
- AOL-DEF-00096255
- AOL-DEF-00096290
- AOL-DEF-00096334
- AOL-DEF-00096380
- AOL-DEF-00096410
- AOL-DEF-00096440
- AOL-DEF-00096478
- AOL-DEF-00096506
- AOL-DEF-00096534
- AOL-DEF-00096565
- AOL-DEF-00096593
- AOL-DEF-00096623

**HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY**

- AOL-DEF-00096653
- AOL-DEF-00096681
- AOL-DEF-00096712
- AOL-DEF-00096741
- AOL-DEF-00096770
- AOL-DEF-00096800
- AOL-DEF-00096828
- AOL-DEF-00096857
- AOL-DEF-00096883
- AOL-DEF-00096911
- AOL-DEF-00096939
- AOL-DEF-00096966
- AOL-DEF-00096991
- AOL-DEF-00097016
- AOL-DEF-00097044
- AOL-DEF-00097073
- AOL-DEF-00097099
- AOL-DEF-00097190
- AOL-DEF-00097193
- AOL-DEF-00097196
- AOL-DEF-00097199
- AOL-DEF-00097203
- AOL-DEF-00097461
- AOL-DEF-00097492
- AOL-DEF-00097518
- AOL-DEF-00097532
- AOL-DEF-00097548
- AOL-DEF-00097577
- AOL-DEF-00097592
- AOL-DEF-00097619
- AOL-DEF-00097650
- AOL-DEF-00097712
- AOL-DEF-00097738
- AOL-DEF-00097745
- AOL-DEF-00097772
- AOL-DEF-00097799
- AOL-DEF-00097809

**HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY**

- AOL-DEF-00097835
- AOL-DEF-00097889
- AOL-DEF-00098399
- AOL-DEF-00098415
- AOL-DEF-00098431
- AOL-DEF-00099188
- AOL-DEF-00100054
- AOL-DEF-00101036
- AOL-DEF-00101039
- AOL-DEF-00101042
- AOL-DEF-00101045
- AOL-DEF-00101048
- AOL-DEF-00101051
- AOL-DEF-00101054
- AOL-DEF-00101057
- AOL-DEF-00101060
- AOL-DEF-00101063
- AOL-DEF-00101066
- AOL-DEF-00101069
- AOL-DEF-00101072
- AOL-DEF-00101079
- AOL-DEF-00101087
- AOL-DEF-00101090
- AOL-DEF-00101093
- AOL-DEF-00101095
- AOL-DEF-00101098
- AOL-DEF-00101101
- AOL-DEF-00101104
- AOL-DEF-00101107
- AOL-DEF-00101117
- AOL-DEF-00101119
- AOL-DEF-00101122
- AOL-DEF-00101134
- AOL-DEF-00101137
- AOL-DEF-00101140
- AOL-DEF-00101143
- AOL-DEF-00101146

**HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY**

- AOL-DEF-00101149
- AOL-DEF-00101152
- AOL-DEF-00101155
- AOL-DEF-00101158
- AOL-DEF-00101161
- AOL-DEF-00101164
- AOL-DEF-00101167
- AOL-DEF-00101170
- AOL-DEF-00101173
- AOL-DEF-00101176
- AOL-DEF-00101179
- AOL-DEF-00101182
- AOL-DEF-00101185
- AOL-DEF-00101188
- AOL-DEF-00101190
- AOL-DEF-00101193
- AOL-DEF-00101196
- AOL-DEF-00101199
- AOL-DEF-00101201
- AOL-DEF-00101204
- AOL-DEF-00101207
- AOL-DEF-00101210
- AOL-DEF-00101213
- AOL-DEF-00101216
- AOL-DEF-00101218
- AOL-DEF-00101221
- AOL-DEF-00101224
- AOL-DEF-00101231
- AOL-DEF-00101233
- AOL-DEF-00101236
- AOL-DEF-00101238
- AOL-DEF-00101240
- AOL-DEF-00101243
- AOL-DEF-00101245
- AOL-DEF-00101248
- AOL-DEF-00101250
- AOL-DEF-00101254

**HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY**

- AOL-DEF-00101258
- AOL-DEF-00101261
- AOL-DEF-00101264
- AOL-DEF-00101266
- AOL-DEF-00101270
- AOL-DEF-00101272
- AOL-DEF-00101275
- AOL-DEF-00101278
- AOL-DEF-00101281
- AOL-DEF-00101284
- AOL-DEF-00101287
- AOL-DEF-00101290
- AOL-DEF-00101293
- AOL-DEF-00101296
- AOL-DEF-00101299
- AOL-DEF-00101302
- AOL-DEF-00101305
- AOL-DEF-00101308
- AOL-DEF-00101311
- AOL-DEF-00101314
- AOL-DEF-00101317
- AOL-DEF-00101320
- AOL-DEF-00101323
- AOL-DEF-00101326
- AOL-DEF-00101328
- AOL-DEF-00101331
- AOL-DEF-00101341
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- AOL-DEF-00702336

Page 1

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

-----x  
AL OTRO LADO, INC., et al., :  
Plaintiffs, : Case No.:  
vs. : 17-cv-02366-BAS-KSC  
KEVIN K. MCALLENAN, et al., :  
Defendants. :  
-----x

DEPOSITION MARKED CONFIDENTIAL

DEPOSITION OF TODD OWEN

Washington, D.C.

Friday, December 13, 2019

9:40 a.m.

Job No.: 529549

Pages: 1 - 332

Reported by: Elizabeth Mingione, RPR

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2 Deposition of TODD OWEN, held at the offices	2 Louisa Slocum, Esquire
3 of Mayer Brown, LLP, 1999 K Street, Northwest,	3 Rameez Burney
4 Washington, D.C., commencing at 9:40 a.m., Friday,	4 Karolina Walters, American Immigration Council
5 December 13, 2019, and taken down stenographically by	5 Kristine King
6 Elizabeth Mingione, Registered Professional Reporter	6 Matthew Fenn (via phone, as indicated)
7 and Notary Public for the Commonwealth of Virginia.	7
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Page 3	Page 5
1 A P P E A R A N C E S O F C O U N S E L:	1 C O N T E N T S
2 ON BEHALF OF PLAINTIFFS:	2 WITNESS: TODD OWEN
3 MAYER BROWN, LLP	3 EXAMINATION BY: PAGE
4 Stephen M. Medlock, Esquire	4 Mr. Medlock ..... 9
5 Ori Lev, Esquire	5 Ms. Shinners ..... 312
6 1999 K Street, Northwest	6 Mr. Lev ..... 322
7 Washington, DC 20006	7
8 (202) 263-3000	8 * * *
9 Smedlock@mayerbrown.com	9
10	10 DEPOSITION EXHIBITS
11 ON BEHALF OF DEFENDANTS:	11 TODD OWEN
12 U.S. DEPARTMENT OF JUSTICE	12 NUMBER DESCRIPTION PAGE
13 Katherine J. Shinners, Esquire	13 Exhibit 20 Notice of Deposition ..... 19
14 David White, Esquire	14 Exhibit 21 Website Printout of Todd Owen
15 Ben Franklin Station	15 Description ..... 49
16 PO Box 868	16 Exhibit 22 U.S. Customs and Border Protection
17 Washington, DC 20044	17 Standard of Conduct, AOL-DEF-00669013 .... 51
18 (202) 598-8259	18 Exhibit 23 Metering Guidance Memorandum, Date
19 Katherine.J.Shinner@usdoj.gov	19 Stamped April 27, 2018 ..... 63
20	20 Exhibit 24 E-mail from Randy Howe, June 19,
21 (Appearances, Continued)	21 2018, AOL-DEF-00088501 ..... 81
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1	NUMBER	DESCRIPTION	PAGE	
2	Exhibit 36	*** Exhibit is Removed ***		P R O C E E D I N G S
3	Exhibit 37	*** Exhibit is Removed ***		Whereupon,
4	Exhibit 38	E-mail from Valerie Boyd, June 5, 2018, AOL-DEF-00273293 .....	196	TODD OWEN,
6	Exhibit 39	Homeland Security Memo of June 5, 2018, AOL-DEF-00273294 .....	199	having been first duly sworn was
8	Exhibit 40	Memo from Kevin McAleenan, August 1, 2018, AOL-DEF-00039620 .....	213	examined and testified as follows:
10	Exhibit 41	Evaluation of Prioritization Queue Management Pilot, AOL-DEF-00039621 .....	213	- - -
12	Exhibit 42	Mark Morgan Memo, CBPALTR0000303 ..	213	EXAMINATION CONDUCTED
13	Exhibit 43	Complaint fof Declaratory and Injunctive Relief .....	220	BY MR. MEDLOCK:
15	Exhibit 44	E-mail Chain Aug. 14, 2017, AOL-DEF-00723886 .....	223	Q. Good morning, sir.
17	Exhibit 45	Confidential Al Otro Lado Lawsuit Document, AOL-DEF-00723887 .....	225	A. Good morning.
19	Exhibit 46	E-mail from William Haralson, March 15, 2017, NTEU 000132 .....	229	Q. Can you please state and spell your name
21	Exhibit 47	Search Results Report and E-mail from Eddie Arias, July 3, 2018 .....	243	for the record.
22				A. My name is Todd Owen, T-O-D-D, O-W-E-N.
				Q. Have you ever gone by any other names, sir?
				A. No.
				Q. Are you presently employed?
				A. Yes.
				Q. Where are you employed?
				A. With U.S. Customs and Border Protection,
				Washington, D.C.
				Q. What is your -- if I refer to U.S. Customs
				and Border Protection as CBP, you'll understand that?

<p style="text-align: right;">Page 10</p> <p>1 A. Yes, I will.</p> <p>2 Q. What is your present job title at CBP?</p> <p>3 A. I'm the executive assistant commissioner</p> <p>4 for the Office of Field Operations.</p> <p>5 Q. How long have you held that title?</p> <p>6 A. Since February of 2015.</p> <p>7 Q. What's your present work address?</p> <p>8 A. 1300 Pennsylvania Avenue, Washington, D.C.</p> <p>9 Q. So Ronald Reagan Building?</p> <p>10 A. Yes. Ronald Reagan Building.</p> <p>11 Q. And what's your home address, sir?</p> <p>12 MS. SHINNERS: Objection. Is that necessary?</p> <p>13 MR. MEDLOCK: If I have to serve a subpoena to get him to testify at trial, it is.</p> <p>14 MS. SHINNERS: I don't think I --</p> <p>15 MR. MEDLOCK: Are you going to instruct him not to answer.</p> <p>16 MS. SHINNERS: I am not. I --</p> <p>17 MR. MEDLOCK: Either object and instruct him not to answer, or he'll answer the question.</p> <p>18 MS. SHINNERS: Object. Intimidating. It's</p>	<p style="text-align: right;">Page 12</p> <p>1 Q. What was your previous position in Los Angeles?</p> <p>2 A. I was the Director of Field Operations for the Los Angeles field office.</p> <p>3 Q. And what's an EEO -- this EEO action that you were talking about?</p> <p>4 A. Equal Employment Opportunity.</p> <p>5 Q. So those were essentially employment cases?</p> <p>6 A. Employment cases. Yes, sir.</p> <p>7 Q. And you have testified before for committees and subcommittees of the U.S. Congress; is that right?</p> <p>8 A. Yes.</p> <p>9 Q. You testified before the Senate Judiciary Committee on May 8, 2019; is that right?</p> <p>10 A. I don't recall the date, but if that's what the record says. Yes.</p> <p>11 Q. Okay. And you testified before the House Ways and Means Committee Subcommittee on Trade, on April 25, 2018; is that right?</p> <p>12 A. Again, if that's the date, I've testified several times before Congress in many committees.</p>
<p style="text-align: right;">Page 11</p> <p>1 not relevant.</p> <p>2 BY MR. MEDLOCK:</p> <p>3 Q. Okay. You live you in McLean, sir; is that right?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. Perry William Drive?</p> <p>6 A. Correct.</p> <p>7 Q. Okay. In fact, 1222 Perry William Drive; is that right?</p> <p>8 A. Correct.</p> <p>9 Q. Okay. That wasn't hard, was it.</p> <p>10 So, sir, have you ever testified in court before?</p> <p>11 A. In court, no.</p> <p>12 Q. Have you ever testified in a deposition before?</p> <p>13 A. Yes.</p> <p>14 Q. How many times?</p> <p>15 A. Twice.</p> <p>16 Q. What were the nature of those cases?</p> <p>17 A. They were both EEO nonselection cases in my previous position in Los Angeles.</p>	<p style="text-align: right;">Page 13</p> <p>1 Q. And you have testified to the Senate Homeland Security and Governmental Affairs Committee before, correct?</p> <p>2 A. Yes.</p> <p>3 Q. And that would have happened in 2018, correct?</p> <p>4 A. Again, I've testified several times in this position since 2015, so every year between different committees.</p> <p>5 Q. And you've testified before the House Committee on Transportation Infrastructure; is that right?</p> <p>6 A. I believe so.</p> <p>7 Q. And you've testified before the House Oversight and Government Reform Committee too as well?</p> <p>8 A. Yes.</p> <p>9 Q. Have you ever provided any other testimony before a House or Senate committee or subcommittee other than the ones I've just listed?</p> <p>10 A. Again, I've testified several times in the last four and a half years, and then in my previous position at headquarters. So you have listed some.</p>

<p style="text-align: right;">Page 14</p> <p>1 I'm not sure if that's inclusive of all.</p> <p>2 Q. Have you ever provided written testimony in 3 the form of an affidavit or declaration?</p> <p>4 MS. SHINNERS: Objection. Vague.</p> <p>5 Q. Do you understand my question, sir?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Go ahead and answer.</p> <p>8 A. I have provided --</p> <p>9 MS. SHINNERS: Uh --</p> <p>10 THE WITNESS: Go ahead.</p> <p>11 MR. MEDLOCK: If you are going to instruct 12 him not to answer, you can --</p> <p>13 MS. SHINNERS: I'm not instructing him not 14 to answer. I apologize.</p> <p>15 THE WITNESS: Okay.</p> <p>16 MS. SHINNERS: You can answer.</p> <p>17 A. I provided affidavits.</p> <p>18 BY MR. MEDLOCK:</p> <p>19 Q. Do you remember what cases you provided 20 affidavits in?</p> <p>21 A. No. Most of those were employment related 22 again.</p>	<p style="text-align: right;">Page 16</p> <p>1 A. Yes.</p> <p>2 Q. It's also important that we not talk over 3 each other. I'll try to do my best to not start a 4 question while you are still answering, if you can do 5 the same while I'm trying to finish a question. Okay, 6 sir?</p> <p>7 A. Yes.</p> <p>8 Q. It's important that if you don't understand 9 any of my questions today, that you say so. And I'll 10 do my best to ask the question better. Sometimes I 11 ask a C-plus question. I'll try to get back to my 12 usual B-plus, A-minus work, if you let me know. Okay?</p> <p>13 A. Yes.</p> <p>14 Q. From time to time your attorney will 15 object. You have already heard that. The objections 16 from your attorney are for the record. A judge rules 17 on them later. Unless your attorney instructs you not 18 to answer, I'm going to ask that you answer my 19 questions today. Okay, sir?</p> <p>20 A. Yes.</p> <p>21 Q. We will take breaks approximately every 22 hour. We can take them more often if you would like.</p>
<p style="text-align: right;">Page 15</p> <p>1 Q. Do you remember how many affidavits you 2 were provided in court cases?</p> <p>3 A. No.</p> <p>4 Q. Do you have an approximation?</p> <p>5 A. Through out my career.</p> <p>6 Q. Yes.</p> <p>7 A. Several dozen.</p> <p>8 Q. All right. Sounds like you have got some 9 experience testifying before, but I'm going to go over 10 just a few ground rules so that we are all on the same 11 page here today. This is a conversation between you 12 and me in which I ask questions and you answer them.</p> <p>13 There's a court reporter sitting to my 14 left, your right. She's taking down everything I say 15 and that you say. That means there's a couple of 16 things we need to keep in mind, or else the court 17 reporter will kill both of us. That is that you must 18 give audible answers to my questions. The court 19 reporter is extremely good. She can't take down 20 shakes of the head or nods of the head. And the 21 phrase uh-huh and huh-uh can sound very similar.</p> <p>22 Do you understand that, sir?</p>	<p style="text-align: right;">Page 17</p> <p>1 My only request to you is that if there's a question 2 pending and you are in the middle of an answer, that 3 you finish your answer before we take the break. Do 4 you understand that?</p> <p>5 A. Yes.</p> <p>6 Q. All right. So unless I tell you otherwise, 7 my questions will relate to the time period from 8 January 1, 2016, through the present day. Do you 9 understand that, sir?</p> <p>10 A. Yes.</p> <p>11 Q. And during this deposition, I'm going to 12 refer the U.S. Department of Homeland Security as DHS. 13 Do you understand what that acronym means sir?</p> <p>14 A. Yes.</p> <p>15 Q. And I'm going to refer the Office of Field 16 Operations as OFO. Do you understand that?</p> <p>17 A. Yes.</p> <p>18 Q. I'm going to refer to ports of entries as 19 POEs. Do you understand that?</p> <p>20 A. Yes.</p> <p>21 Q. From time to time, I'm going to ask you 22 about certain practices that have been implemented at</p>

<p style="text-align: right;">Page 18</p> <p>1 CBP. When I do that, I'm asking for your personal 2 knowledge, not the knowledge of CBP. Do you 3 understand that?</p> <p>4 A. Yes.</p> <p>5 Q. And do you understand that you have taken 6 an oath to tell the truth today, sir?</p> <p>7 A. Yes.</p> <p>8 Q. That's the same oath that you would take 9 when testifying in court. Do you understand that?</p> <p>10 A. Yes.</p> <p>11 Q. Is there any reason why you can't tell me 12 the complete and honest truth in response to my 13 questions today?</p> <p>14 A. No.</p> <p>15 Q. And you understand there could be criminal 16 consequences for lying under oath?</p> <p>17 A. Yes.</p> <p>18 Q. And you understand that lying under oath 19 could violate CBP's ethics policies as well?</p> <p>20 A. Yes.</p> <p>21 Q. All right. I'm going to mark the first 22 exhibit as Exhibit 20.</p>	<p style="text-align: right;">Page 20</p> <p>1 Q. Without going into the substance of any 2 conversations that you have had with attorneys 3 regarding this case, can you tell me whether you met 4 with anyone in preparation for your deposition today?</p> <p>5 A. I did meet with the attorneys.</p> <p>6 Q. When you say the attorneys can you define 7 what that means?</p> <p>8 A. The attorneys from chief counsel with CBP 9 as well as Department of Justice.</p> <p>10 Q. When did you meet with them to prepare for 11 your deposition?</p> <p>12 A. Yesterday and the day before.</p> <p>13 Q. Over those two days, approximately how long 14 did you meet with those attorneys to prepare for your 15 deposition?</p> <p>16 A. Yesterday about four or five hours, the day 17 before about 45 minutes.</p> <p>18 Q. So in total we are talking about somewhere 19 besetment five and almost six hours; is that right?</p> <p>20 A. That would be right.</p> <p>21 Q. During the time that you met with those 22 attorneys, were there any non attorneys present in the</p>
<p style="text-align: right;">Page 19</p> <p>1 - - -</p> <p>2 (A document was marked as Deposition 3 Exhibit Number 20.)</p> <p>4 - - -</p> <p>5 BY MR. MEDLOCK:</p> <p>6 Q. So I'm showing you what we have marked as 7 Exhibit 20 to your deposition, sir. It's a multi-page 8 document that on the first page has a caption that 9 says, Plaintiff's First Deposition Notices.</p> <p>10 Please take a moment to review it, and let 11 me know audibly when you are done reviewing it, sir.</p> <p>12 A. I've finished.</p> <p>13 Q. Okay. This is a deposition notice that 14 contains your name on page 3; is that right?</p> <p>15 A. Yes.</p> <p>16 Q. And you understand that you are here to 17 testify today pursuant to this deposition notice; is 18 that right?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And are you being represented by any 21 attorneys in connection with your deposition today?</p> <p>22 A. These attorneys. Yes. Yes.</p>	<p style="text-align: right;">Page 21</p> <p>1 room with you?</p> <p>2 A. No.</p> <p>3 Q. Did anyone participate in the meetings that 4 you had to prepare for today's deposition by 5 telephone?</p> <p>6 A. No.</p> <p>7 Q. Did anybody participate in the those 8 meetings by video conference?</p> <p>9 A. No.</p> <p>10 Q. Prior to the meeting did you receive any 11 documents that you were supposed to review prior to 12 your deposition preparation session?</p> <p>13 A. Prior to the meeting documents that --</p> <p>14 Q. Yes.</p> <p>15 A. -- I pulled to review?</p> <p>16 Q. That were sent to you by counsel?</p> <p>17 A. Yes.</p> <p>18 Q. Approximately how many did you receive?</p> <p>19 A. Four.</p> <p>20 Q. And when you say they were sent to you by 21 counsel, were they sent to you by counsel for CBP or 22 DOJ?</p>

<p style="text-align: right;">Page 22</p> <p>1 A. CBP counsel.      2 Q. Did reviewing those documents refresh your      3 memory about any events that had happened in the past      4 with respect to the metering policies?      5 A. Yes.      6 Q. What were the documents that refreshed your      7 recollection about the metering policy?      8 MS. SHINNERS: Objection. I think it makes      9 -- work product -- but I think it makes more sense to      10 if in the context of the specific questions because      11 the -- in order to fall within the refresh      12 recollection exception, it would need to actually --      13 he would need to rely on it for his testimony. So if      14 you would like to ask him if he reviewed any documents      15 to refresh his memory about specific facts,      16 Q. So, as you know, under Rule 30(D)(1),      17 objections are supposed to be stated concisely in a      18 nonargumentative and nonsuggestive manner. I have let      19 you make several speaking objections today. It's      20 going to stop. Okay. You've got an objection --      21 MS. SHINNERS: That was not a speaking      22 objection. It was a privilege objection.</p>	<p style="text-align: right;">Page 24</p> <p>1 MR. MEDLOCK: Okay. We will move on that      2 issue. We will bring him back to testify again. As      3 you know, when he testified that it refreshed his      4 recollection, that is an exception to the work product      5 doctrine, and I am entitled to know that. Okay.      6 BY MR. MEDLOCK:      7 Q. So, sir, are you going to follow your      8 counsel's instruction and not testify about the      9 documents that you said refreshed your recollection?      10 A. I will follow my counsel's instructions.      11 Q. Okay. You said there were approximately      12 four documents that were sent to you.      13 How long did you spend reviewing those      14 documents?      15 A. Two or three minutes.      16 Q. And then when were those documents sent to      17 you prior to your meetings with counsel?      18 A. They were provided to me at the first      19 meeting with counsel.      20 Q. Okay. That's the 45-minute --      21 A. Yes.      22 Q. -- meeting that happened two days ago?</p>
<p style="text-align: right;">Page 23</p> <p>1 MR. MEDLOCK: -- you can object to the      2 form. So you are objecting to him talking about      3 documents that refreshed his recollection that he      4 already testified as privileged; is that right?      5 MS. SHINNERS: I'm objecting to --      6 MR. MEDLOCK: Are you going to talk --      7 MS. SHINNERS: -- the question as      8 potentially revealing work product.      9 MR. MEDLOCK: Are you going to stop him      10 from testifying about documents that he said refreshed      11 his recollection?      12 MS. SHINNERS: I am not.      13 MR. MEDLOCK: Okay. So my --      14 MS. SHINNERS: However, in this --      15 BY MR. MEDLOCK:      16 Q. My question to you, sir, is what were those      17 documents, to the best of your recollection?      18 MS. SHINNERS: Objection. Work product.      19 MR. MEDLOCK: Okay. Are you going to stop      20 him from testifying?      21 MS. SHINNERS: I instruct you not to answer      22 this question. And I am state --</p>	<p style="text-align: right;">Page 25</p> <p>1 A. Yes.      2 Q. During the longer meeting that you      3 discussed that happened yesterday, were you shown any      4 documents during that meeting?      5 A. Yes.      6 Q. Approximately how many documents were you      7 shown?      8 A. Three.      9 Q. And during those three documents that you      10 were shown, I take it they were different than the      11 four that you were shown the day before?      12 A. Correct.      13 Q. Okay. Did those three documents refresh      14 your memory about events that happened in the past      15 with respect to the metering policy?      16 A. No.      17 Q. During the 45-minute session two days ago,      18 who were the attorneys that were in the room with you?      19 A. My attorneys from chief counsel with the      20 CBP, Louisa and Christine.      21 Q. And during the meeting that happened      22 yesterday for about four hours, how -- who were the</p>

<p style="text-align: right;">Page 26</p> <p>1 attorneys that were in the room with you that day?</p> <p>2 A. The two attorneys from the Department of 3 Justice and the two attorneys from CBP counsel.</p> <p>4 Q. Did you review any deposition transcripts 5 prior to today's deposition?</p> <p>6 A. I reviewed my deposition that I had 7 provided some time ago.</p> <p>8 Q. In what case?</p> <p>9 A. In this case. Oh, I'm sorry. I'm 10 referring to the interrogatories.</p> <p>11 Q. I see.</p> <p>12 A. That's right. I'm sorry. I was confused.</p> <p>13 Q. That's all right. So I take it you didn't 14 review any depositions?</p> <p>15 A. Not a deposition, no.</p> <p>16 Q. Okay. Did you speak to anybody else at CBP 17 or DHS to -- about today's deposition?</p> <p>18 A. No.</p> <p>19 Q. Does anybody else other than counsel know 20 that you are here today?</p> <p>21 A. Yes.</p> <p>22 Q. Who?</p>	<p style="text-align: right;">Page 28</p> <p>1 wouldn't be available throughout the day.</p> <p>2 Q. And those four that you just named, those 3 four roles are direct reports to you?</p> <p>4 A. The three are direct reports. The one I am 5 the direct report to, my deputy commissioner.</p> <p>6 Q. Fair point. Can you give me the names of 7 those individuals along with their titles?</p> <p>8 A. Yes. The deputy commissioner is Robert 9 Perez. The executive director for operations is Randy 10 Howell. The executive director for admissibility 11 programs is Todd Hoffman. And the executive director 12 for the National Targeting Center is Vernon Foray.</p> <p>13 Q. And how often on an average day do you meet 14 with those four individuals?</p> <p>15 A. Multiple times.</p> <p>16 Q. Are you all in the same office in the 17 Ronald Reagan building?</p> <p>18 A. Yes, we were.</p> <p>19 Q. Do you have any standing meetings with your 20 leadership committee on a weekly or daily basis?</p> <p>21 A. I have a daily 8:15 with the leadership of 22 field operations. And there is a daily nine o'clock</p>
<p style="text-align: right;">Page 27</p> <p>1 A. My leadership team knows that I'm out of 2 pocket today because I'm giving a deposition.</p> <p>3 Q. But they don't know what case?</p> <p>4 A. They know what's on the metering case.</p> <p>5 Yes.</p> <p>6 Q. What did you specifically tell your 7 leadership team about it?</p> <p>8 A. That I would be unavailable throughout the 9 day because I'm here giving a deposition on the 10 metering case.</p> <p>11 Q. Did your leadership team have any questions 12 for you --</p> <p>13 A. No.</p> <p>14 Q. -- about today's deposition? When you say 15 your leadership team, who is on your leadership team?</p> <p>16 A. My deputy commissioner, my direct boss, as 17 well as my executive director for operations, as well 18 as my executive director for admissibility, and my 19 executive director for the National Targeting Center. 20 Those are the four that I routinely engage with 21 throughout the day on operational matters.</p> <p>22 I felt it was important for them to know I</p>	<p style="text-align: right;">Page 29</p> <p>1 three days ad week with the commissioner and the 2 deputy commissioner on intelligence matters in the 3 SCIF.</p> <p>4 Q. The weekly 8:15, that's not in the SCIF, is 5 that right?</p> <p>6 A. No, it's not.</p> <p>7 Q. During that 8:15 meeting who exactly is 8 present at that meeting?</p> <p>9 A. There are six executive directors. My 10 deputy executive assistant commissioner, my chief of 11 staff, his chief of staff.</p> <p>12 Q. Okay. Does anybody attend that meeting via 13 telephone?</p> <p>14 A. No.</p> <p>15 Q. Are any minutes of that meeting kept?</p> <p>16 A. No.</p> <p>17 Q. Are any notes sent around after that 18 meeting?</p> <p>19 A. No.</p> <p>20 Q. Are there any standing topics at that 21 meeting?</p> <p>22 A. Standing topics, no.</p>

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<p>1       Q. Are there any topics that are typically 2       discussed at that meeting?</p> <p>3       A. It is a 24-hour recap of the activities 4       that took place in the ports of entry.</p> <p>5       Q. And when you say in the ports of entry, are 6       you talking about ports of entry on the southwest 7       board ports of entry generally?</p> <p>8       A. Ports of entry throughout the country.</p> <p>9       Q. And do event that occur at ports of entry 10      on the southwest border come up during that meeting?</p> <p>11      A. Yes.</p> <p>12      Q. Has the metering policy ever come up during 13      that meeting?</p> <p>14      A. Yes.</p> <p>15      Q. Has the -- has the migration crisis action 16      team ever come up during that meeting?</p> <p>17      A. Yes.</p> <p>18      Q. Have members of the migration crisis action 19      team ever been invited to that meeting?</p> <p>20      A. No.</p> <p>21      Q. Has anybody other than the individuals that 22      you already listed ever been invited to that meeting</p>	<p>1       investigation into metering?</p> <p>2            MS. SHINNERS: Object to the extent it 3       would cause you to -- answering would cause you to 4       reveal deliberations that are predecisional. If you 5       can answer without revealing such predeliberations, 6       you may do so.</p> <p>7       A. So, I'm sorry, specific to the metering 8       policy.</p> <p>9       Q. Correct.</p> <p>10      A. I can recall two events where policy was 11       not followed in terms of the metering policy. We had 12       discussions of those events, and to ensure that they 13       were referred to our Office of Professional 14       Responsibility.</p> <p>15      Q. What was the first event?</p> <p>16      A. As best as I can recall, one event was -- 17       occurred in Laredo.</p> <p>18      Q. What was that event in Laredo?</p> <p>19      A. To the best of my recollection, individuals 20       who had crossed into the U.S. were returned by the 21       officers back into Mexico.</p> <p>22      Q. So the individuals actually stepped foot on</p>
Page 31	Page 33
<p>1       on an ad hoc basis?</p> <p>2       A. There will be. On -- again this is an 3       operational meeting. So depending if an event occurs 4       in a subject matter has information to add, they will 5       be included.</p> <p>6       Q. Have you ever discussed investigations by 7       the Office of Civil Rights and Civil Liberties during 8       those meetings?</p> <p>9       A. No.</p> <p>10      Q. During the 8:15 meeting have you ever 11       discussed investigations by the DHS Office of 12       Inspector General?</p> <p>13      A. We have discussed incidents that have been 14       relayed -- or have been referred to OIG for 15       investigation.</p> <p>16      Q. Have you ever discussed incidents related 17       to the metering policy that have been referred to OIG 18       for investigation during that meeting, the 8:15 19       meeting?</p> <p>20      A. Yes.</p> <p>21      Q. Can you describe those discussions that 22       have happened at the 8:15 meeting about the DHS-OIG</p>	<p>1       U.S. soil and then were moved back --</p> <p>2       A. Yes.</p> <p>3       Q. -- to Mexican soil; is that right?</p> <p>4       A. Yes.</p> <p>5       Q. Who reported to you about the incident in 6       Laredo?</p> <p>7       A. That was reported up from the Laredo field 8       office, the Laredo leadership.</p> <p>9       Q. Who in Laredo leadership?</p> <p>10      A. I don't recall.</p> <p>11      Q. When did this event occur?</p> <p>12      A. Best of my recollection, two years ago.</p> <p>13      Q. So 2017?</p> <p>14      A. Sometime in 2018.</p> <p>15      Q. Okay. And do you recall what month of 16       2018?</p> <p>17      A. No, I do not.</p> <p>18      Q. And this event was referred to the Office 19       of Professional Responsibilities; is that right?</p> <p>20      A. It was.</p> <p>21      Q. Do you know what the outcome of the Office 22       of Professional Responsibilities investigation was</p>

<p style="text-align: right;">Page 34</p> <p>1    into this incident?</p> <p>2    A. I do not.</p> <p>3    Q. Who at the Office of Professional</p> <p>4    Responsibility would this have been referred to?</p> <p>5    A. We have an intake center that receives</p> <p>6    these allegations. And then they are assigned within</p> <p>7    the Office of Professional Responsibility. So we sent</p> <p>8    them into the joint intake center, as it's called; and</p> <p>9    it starts the process from there.</p> <p>10   Q. And you said this instant happened in</p> <p>11   Laredo. Are you referring to the Laredo field office;</p> <p>12   is that right?</p> <p>13   A. I believe this was the port of Laredo.</p> <p>14   Q. Okay. So who at the port of Laredo was</p> <p>15   directly responsible for directing individuals that</p> <p>16   were on U.S. soil back to Mexico?</p> <p>17   A. Who were the subjects of this action?</p> <p>18   Q. Correct.</p> <p>19   A. I do not know.</p> <p>20   Q. Do you know any CBP officers' names who</p> <p>21   were involved with the action?</p> <p>22   A. I do not.</p>	<p style="text-align: right;">Page 36</p> <p>1    Q. Who reported to you initially about this</p> <p>2    incident in Brownsville?</p> <p>3    A. It would have come up again through the</p> <p>4    Laredo field office leadership.</p> <p>5    Q. And who specifically in Laredo field office</p> <p>6    leadership would have reported up?</p> <p>7    A. It would likely have been whoever the watch</p> <p>8    commander was that day.</p> <p>9    Q. But you don't know the name?</p> <p>10   A. No, I do not.</p> <p>11   Q. What was discussed at the 8:15 meeting</p> <p>12   regarding this incident in Brownsville?</p> <p>13   A. As far as I can --</p> <p>14   MS. SHINNERS: Objection to the extent it</p> <p>15   would cause you to reveal predecisional deliberations.</p> <p>16   To the extent you can answer without doing so.</p> <p>17   A. Okay. Just again that we ensured that it</p> <p>18   was referred to the Joint Intake Center for</p> <p>19   investigation review by Office of Professional</p> <p>20   Responsibility.</p> <p>21   Q. Do you know what the results of that</p> <p>22   referral to the Office of Professional Responsibility</p>
<p style="text-align: right;">Page 35</p> <p>1    Q. Do you recall who would have been port</p> <p>2    director at Laredo at the time?</p> <p>3    A. At the time, it was likely Greg Alvarez.</p> <p>4    Q. You say likely. Are you --</p> <p>5    A. Because Greg Alvarez stepped into a new</p> <p>6    position around the same time, so --</p> <p>7    Q. I see. Is there anything else you can</p> <p>8    recall right now sitting here today about this Laredo</p> <p>9    incident that happened sometime in 2018 that was</p> <p>10   discussed at the 8:15 meeting?</p> <p>11   A. Just again that it was referred to the JIC,</p> <p>12   the Joint Intake Center.</p> <p>13   Q. Okay. Now you said there was a second</p> <p>14   incident with respect to the metering policy that was</p> <p>15   at the 8:15 meeting. What was that second incident?</p> <p>16   A. I believe it occurred in Brownsville. And</p> <p>17   it was similar circumstances. Individuals that had</p> <p>18   set foot on U.S. soil were taken back.</p> <p>19   Q. When did that incident occur?</p> <p>20   A. Around the same time.</p> <p>21   Q. In 2018?</p> <p>22   A. As far as I can recall, 2018.</p>	<p style="text-align: right;">Page 37</p> <p>1    was?</p> <p>2    A. I do not.</p> <p>3    Q. Did you ever follow up regarding either of</p> <p>4    these incidents after they were raised at the 8:15</p> <p>5    meeting?</p> <p>6    A. I did not.</p> <p>7    Q. Did you ever instruct anyone to do so?</p> <p>8    A. No. I instructed to make sure it was in</p> <p>9    fact referred, that both were referred.</p> <p>10   Q. Did an incident where individuals were on</p> <p>11   U.S. soil and were returned to Mexican can soil at the</p> <p>12   Tecate point of entry ever come up during your 8:15</p> <p>13   meeting?</p> <p>14   A. Not through the 8:15.</p> <p>15   Q. Okay. But it may have come up in a</p> <p>16   different meeting; is that right?</p> <p>17   A. It did not come up through a meeting. It</p> <p>18   came up with the production of the OIG report.</p> <p>19   Q. I see. Okay. Can you -- besides this</p> <p>20   incident in the Laredo Port of Entry and this incident</p> <p>21   at the Brownsville Port of Entry, can you recall any</p> <p>22   other discussions regarding the metering policy that</p>

<p style="text-align: right;">Page 38</p> <p>1    occurred at the 8:15 meeting?</p> <p>2       A. The metering policy?</p> <p>3       Q. Correct.</p> <p>4       A. Is part of general discussions on our</p> <p>5       operational flow at the ports of entry.</p> <p>6       Q. So it sort of gets wrapped up into that</p> <p>7       general discussion?</p> <p>8       A. Some days it gets wrapped up in that</p> <p>9       general conversation. We have been dealing with</p> <p>10      metering since 2016.</p> <p>11      Q. And you are still dealing with it today?</p> <p>12      A. We still implement as we need to</p> <p>13      operationally. Yes.</p> <p>14      Q. Okay. And it still -- the metering policy</p> <p>15      is being implemented at ports of entry today?</p> <p>16      A. As needed, yes.</p> <p>17      Q. Do you know whether it's being implemented</p> <p>18      at San Ysidro today?</p> <p>19      A. It is likely at San Ysidro today.</p> <p>20      Q. Otay Mesa?</p> <p>21      A. I don't know for sure.</p> <p>22      Q. Hidalgo?</p>	<p style="text-align: right;">Page 40</p> <p>1       other than the ones that we have mentioned right now</p> <p>2       that you are aware of where metering is occurring this</p> <p>3       week?</p> <p>4       A. No.</p> <p>5       Q. Okay. You mentioned that there's a second</p> <p>6       meeting that occurs in the SCIF.</p> <p>7       A. Yes.</p> <p>8       Q. On a daily basis. What time does that</p> <p>9       meeting happen at?</p> <p>10      A. Nine o'clock.</p> <p>11      Q. Who attends the nine o'clock meeting?</p> <p>12      A. That is the senior leadership of CBP,</p> <p>13      whereas the 8:15 is the senior leadership of field</p> <p>14      operations. And it's an operational discussion. The</p> <p>15      nine o'clock meeting in the SCIF is an</p> <p>16      intelligence-driven discussion between the</p> <p>17      commissioner, the deputy commissioner, and the six</p> <p>18      operational leads, myself being one of them.</p> <p>19      Q. Who are the six operational leads besides</p> <p>20      yourself?</p> <p>21      A. Chief of the border patrol. The chief of</p> <p>22      what's called Enterprise Services, chief of</p>
<p style="text-align: right;">Page 39</p> <p>1       A. When you say today, are you speaking</p> <p>2       physically today or --</p> <p>3       Q. This week.</p> <p>4       A. This week, Hidalgo, not likely.</p> <p>5       Q. Not likely. Why do you say not likely?</p> <p>6       A. Because the migrant flows have diminished</p> <p>7       through the Hidalgo and far ports of entry.</p> <p>8       Q. How about Laredo?</p> <p>9       A. Likely in Laredo.</p> <p>10      Q. Brownsville?</p> <p>11      A. Not certain on Brownsville.</p> <p>12      Q. Nogales?</p> <p>13      A. Definitely being implemented in Nogales.</p> <p>14      Q. El Paso?</p> <p>15      A. Yes, it's being implemented in El Paso.</p> <p>16      Q. And --</p> <p>17      A. And these are the ports of entry that I'm</p> <p>18      referencing.</p> <p>19      Q. Correct. And that's what I mean to say as</p> <p>20      well.</p> <p>21      A. Right.</p> <p>22      Q. Are there any ports, other ports of entry</p>	<p style="text-align: right;">Page 41</p> <p>1       Operational Support, the Office of Trade. Who am I</p> <p>2       forgetting -- oh, and the deputy commissioner. Oh,</p> <p>3       and Air and Marine is the sixth one. I'm sorry.</p> <p>4       Q. So you referred to the commissioner of CBP.</p> <p>5       That individual is sometimes referred to as C1 in</p> <p>6       e-mail traffic, right?</p> <p>7       A. Yes. Or AC1 as Acting C1. We have had</p> <p>8       actings for some time.</p> <p>9       Q. Understand. And have you ever seen an</p> <p>10      individual referred to as C2 in the e-mails?</p> <p>11      A. That is the deputy commissioner.</p> <p>12      Q. And if there's --</p> <p>13      A. Or DC2.</p> <p>14      Q. -- an acting --</p> <p>15      A. Yes, sir. Yes, sir.</p> <p>16      Q. And you were referred sometimes referred to</p> <p>17      as EAC in e-mails; is that right?</p> <p>18      A. That is my title, executive assistant</p> <p>19      commissioner.</p> <p>20      Q. Okay. And that's just an abbreviation of</p> <p>21      your title; is that right?</p> <p>22      A. Yes. And there's also others that share</p>

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<p>1       that title.</p> <p>2       Q. Okay. Now, besides this -- so this 9:00</p> <p>3       a.m. meeting that occurs in the SCIF that you said is</p> <p>4       intelligence driven, are notes taken at that meeting?</p> <p>5       A. No.</p> <p>6       Q. Are any summaries of that meeting</p> <p>7       distributed after it occurs?</p> <p>8       A. No.</p> <p>9       Q. And the individuals that you listed</p> <p>10      attending that meeting, are there other individuals</p> <p>11      who sometimes attend that meeting an ad hoc basis?</p> <p>12      A. There are.</p> <p>13      Q. Of those -- the individuals that attend on</p> <p>14      ad hoc basis, can you recall who they would be?</p> <p>15      A. They are generally representatives from the</p> <p>16      Office of Intelligence that are briefing on specific</p> <p>17      intelligence products.</p> <p>18      Q. Has the metering policy ever been discussed</p> <p>19      in the 9:00 a.m. meeting?</p> <p>20      A. No.</p> <p>21      Q. Has queue management ever been discussed in</p> <p>22      the 9:00 a.m. meeting?</p>	<p>1       from CBP as to what constitutes law enforcement</p> <p>2       privileged information, we can do so. I know that</p> <p>3       counsel instructed you, you can't take a break, but we</p> <p>4       can take a break to discuss --</p> <p>5            MR. MEDLOCK: You can take it to discuss</p> <p>6       privilege -- let me ask a different question.</p> <p>7            BY MR. MEDLOCK:</p> <p>8       Q. Have you seen e-mails from the Migration</p> <p>9       Crisis Action Team that list data about processing and</p> <p>10      throughput at ports of entry?</p> <p>11      A. Yes.</p> <p>12      Q. And those e-mails go out on a daily basis;</p> <p>13      is that right?</p> <p>14      A. Yes.</p> <p>15      Q. And you consume that those e-mails as a</p> <p>16      part of your official duties; is that right?</p> <p>17      A. Yes.</p> <p>18      Q. And those e-mails for the Migration Crisis</p> <p>19      Action Team are sometimes referred to as MCAT reports,</p> <p>20      sometimes they are referred to as queue management</p> <p>21      reports; is that right?</p> <p>22      A. Mostly referred to as MCAT reports.</p>
Page 43	Page 45
<p>1       A. No.</p> <p>2       Q. Do you understand there to be a difference</p> <p>3       between metering and queue management, sir?</p> <p>4       A. No. I view it as the same.</p> <p>5       Q. They are synonymous terms?</p> <p>6       A. Yes.</p> <p>7       Q. Okay. Have members of the Migration Crisis</p> <p>8       Action Team ever attended the 9:00 a.m. meeting in the</p> <p>9       SCIF?</p> <p>10      A. Yes.</p> <p>11      Q. Which ones?</p> <p>12      A. Which?</p> <p>13      Q. Members of MCAT?</p> <p>14      A. They have different folks who come and</p> <p>15      report the stats on a weekly basis.</p> <p>16      Q. And when you say report the stats, can you</p> <p>17      tell me what you mean by that?</p> <p>18      MS. SHINNERS: Objection. I'm going to</p> <p>19      object to the extent it calls for classified</p> <p>20      information or law enforcement privileged information.</p> <p>21      To the extent that you can answer without revealing</p> <p>22      it, you can. If you need to consult with your counsel</p>	<p>1       Q. But you've seen reports called queue</p> <p>2       management reports before?</p> <p>3       A. Yes.</p> <p>4       Q. And those are also drafted by the MCAT team</p> <p>5       as well?</p> <p>6       A. Yes.</p> <p>7       Q. And those MCAT and queue management reports</p> <p>8       operationally important for you, right?</p> <p>9       A. They provide an operational snapshot.</p> <p>10      Q. And are those operational snapshots useful</p> <p>11      to you in your day-to-day business?</p> <p>12      A. To some degree.</p> <p>13      Q. And why are they useful to some degree?</p> <p>14      A. Because they again are just a snapshot in</p> <p>15      time and are not very detailed. So they often don't</p> <p>16      give you the reasons behind the numbers.</p> <p>17      Q. But you do use them; is that right?</p> <p>18      A. I use them to, again, to give me some</p> <p>19      visibility as to what's going on in the ports.</p> <p>20      Q. The presentations that are made by the MCAT</p> <p>21      team at the 9:00 a.m. meeting and the SCIF, are they</p> <p>22      -- is the information presented different than what is</p>

<p style="text-align: right;">Page 46</p> <p>1 presented in those daily e-mails?      2 A. No.      3 Q. So it's just simply a recitation of what      4 you could get by reading those e-mails; is that right?      5 A. Correct.      6 Q. Got it. And just presented verbally; is      7 that right?      8 A. Yes.      9 Q. Okay. And do the MCAT team members -- does      10 an MCAT team member regularly attend the 9:00 a.m.      11 meeting in the SCIF?      12 A. They present generally once a week. I      13 think someone from MCAT may attend throughout the week      14 but not necessarily every day.      15 Q. What day --      16 A. So --      17 Q. -- of the week does the MCAT presentation      18 usually happen?      19 A. Generally at the start of the week, but it      20 will also align with when the commissioner and the      21 deputy are attending. They may not attend every day,      22 Q. So C1 and C2, or AC1 and AC2, are not at</p>	<p style="text-align: right;">Page 48</p> <p>1 these are the intelligence discussions in the SCIF as      2 to what the event or the threat may be.      3 Q. Okay. So you have the 8:15 meeting, you      4 have a 9:00 a.m. meeting. Do you have any other daily      5 meetings either with your direct reports or people you      6 directly report to?      7 A. No.      8 Q. Do you have any weekly meetings with your      9 direct reports or people you directly report to?      10 A. Outside of the 8:15, no.      11 Q. Okay. And so the 8:15 is a weekly meeting?      12 A. Every day.      13 Q. It's a daily meeting.      14 A. Daily.      15 Q. So every weekday; is that right?      16 A. Every weekday.      17 Q. And the 9:00 am meeting is every weekday as      18 well?      19 A. The 9:00 a.m. is intended to be every      20 weekday but many days through the week it's canceled      21 for whatever reason.      22 Q. Oh, so --</p>
<p style="text-align: right;">Page 47</p> <p>1 the Monday meeting that might get bumped to Tuesday or      2 Wednesday?      3 A. Correct.      4 Q. All right. So we have talked about the      5 8:15 meeting and the 9:00 a.m. meeting in the SCIF.      6 Actually, I should go back to the 9:00 a.m. meeting.      7 Are there any standing topics that are      8 discussed at the 9:00 a.m. meeting?      9 MS. SHINNERS: Objection. I believe that      10 veers in towards --      11 MR. MEDLOCK: It's just a yes or no. I was      12 just asking yes or no.      13 MS. SHINNERS: Fair enough. I will allow      14 the witness.      15 A. Standing topics. Yes.      16 Q. Okay. And the members of that meeting,      17 they know what those standing topics are; is that      18 right?      19 A. There's generally a recurring reporting of      20 certain intelligence matters that are being tracked.      21 Now that recurring reporting could go on for several      22 months. It could go on for a few days. It's, again,</p>	<p style="text-align: right;">Page 49</p> <p>1 A. So it may not happen five days a week.      2 Q. I see. So is that generally when the      3 commissioner and deputy commissioner can't be there?      4 A. Are on travel or whatnot.      5 Q. Okay. Let me move to the next exhibit.      6 - - -      7 (A document was marked as Deposition      8 Exhibit Number 21.)      9 - - -      10 BY MR. MEDLOCK:      11 Q. I think you might be familiar with this      12 exhibit.      13 A. Yes.      14 Q. But humor me, and let me know when you have      15 read through it.      16 A. Yes. Yes.      17 Q. All right. So Exhibit 21 is a copy of a      18 printout from a website that at the stop is entitled      19 Executive Assistant Commissioner Todd Owen.      20 Do you see that?      21 A. Yes.      22 Q. And that's you, obviously?</p>

<p style="text-align: right;">Page 50</p> <p>1 A. Yes.      2 Q. Okay.      3 A. Yes.      4 Q. Okay. This website lists some of your      5 educational and career highlights; is that right?      6 A. Yes.      7 Q. And you were consulted when this website      8 was drafted; is that right?      9 A. I'm sure I reviewed a draft. Yes.      10 Q. And you approved what went on this; is that      11 right?      12 A. Yes.      13 Q. Is there anything that's missing from this      14 page or that you think is inaccurate on it?      15 A. The budget figure is inaccurate.      16 Q. It's increased since then?      17 A. Yes, it has.      18 Q. Other than that, is there anything else      19 that you would change about this website?      20 A. Doesn't appear so.      21 Q. Okay. So what's the budget that you manage      22 today?</p>	<p style="text-align: right;">Page 52</p> <p>1 Exhibit Number 22.)      2 - - -      3 BY MR. MEDLOCK:      4 Q. Let me show you a copy of Exhibit 22. It's      5 a long document. I'm sure you have probably seen it      6 in your career. Take a moment to flip through it.      7 I'll direct you to the parts I want to talk about.      8 A. Okay.      9 Q. All right, sir. Exhibit 22 is a multi-page      10 document entitled U.S. Customs and Border Protection      11 Standards Of Conduct. Do you see that, sir?      12 A. Yes.      13 Q. And, for the record, it begins with      14 AOL-DEF-00669013 in the bottom right corner.      15 Do you see that?      16 A. Yes.      17 Q. Lawyers call those Bates numbers. I have      18 no idea why. But I may refer to them as Bates numbers      19 throughout today's deposition.      20 Can you flip through to the Section 3.2.      21 I'm sorry. It's on the first page. I apologize. You      22 don't need to flip anywhere. Section 3.2 on the first</p>
<p style="text-align: right;">Page 51</p> <p>1 A. 6.5 billion.      2 Q. Okay. And how many employees do you      3 oversee at CBP today?      4 A. Just on -- just under 30,000.      5 Q. How many of those 30,000 are sworn law      6 enforcement officers?      7 A. 24,600 approximately.      8 Q. And one of the things that you do in your      9 role as EAC is you set an example for the other CBP      10 employees; is that right?      11 A. Try to.      12 Q. And would you agree with me that it's      13 important for a CBP officer to be honest when they are      14 on and off duty; is that right?      15 A. Yes.      16 Q. And as a member of CBP senior leadership,      17 you try to hold yourself to that standard, and in fact      18 to a higher standard; is that right?      19 A. Yes.      20 Q. Okay.      21 - - -      22 (A document was marked as Deposition</p>	<p style="text-align: right;">Page 53</p> <p>1 page that ends in 69013. Do you see that?      2 A. Yes.      3 Q. Okay. And this section here notes that a      4 CBP employee that does not comply with the standards      5 of conduct can face disciplinary action; is that      6 right?      7 A. Yes.      8 Q. And if you move up, and Section 3.1 on the      9 same page, that section begins, "In fulfilling its      10 mission, CBP and its employees must sustain the trust      11 and confidence of the public they serve."      12 Did I read that correctly?      13 A. Yes.      14 Q. In your opinion, why is it important for      15 CBP to sustain the trust of the public?      16 A. In my opinion as a law enforcement agency,      17 if you lose the public trust, you won't be able to      18 perform the mission that you are entitled -- you're      19 expected to perform.      20 Q. Is it important for a law enforcement      21 agency to be candid with the public about what it's      22 doing and why?</p>

<p style="text-align: right;">Page 54</p> <p>1 A. Yes, it is.</p> <p>2 Q. Do you believe that CBP has been candid 3 with the public regarding the metering policy?</p> <p>4 A. I know that I have been candid with the 5 metering with the public. I can't speak for the 6 entire Agency.</p> <p>7 Q. Are you aware of any instances where any of 8 the law enforcement officers that you oversee have not 9 been candid with the public about the metering policy?</p> <p>10 A. Have not been candid, not that I can 11 recall.</p> <p>12 Q. Are you aware of any instances in which CBP 13 employees have been told that they have not been 14 candid about the metering policy?</p> <p>15 A. Can you repeat the question.</p> <p>16 Q. Yeah. Are you aware of any instances in 17 which CBP employees have been told that they weren't 18 candid about the metering policy?</p> <p>19 A. Not that I can recall.</p> <p>20 Q. Are you aware of any instance in which CBP 21 officers were told that the metering policy broke the 22 law?</p>	<p style="text-align: right;">Page 56</p> <p>1 Q. -- then there's the sections, so I get it.</p> <p>2 A. Okay.</p> <p>3 Q. So I'm under Standards of Conduct, 6.1, 4 conduct prejudicial to the government. Do you see 5 that?</p> <p>6 A. Yes.</p> <p>7 Q. All right. That section, the body of that 8 section reads, quote, Employees will not engage on or 9 off duty in criminal, infamous, dishonest or 10 notoriously disgraceful conduct, or any other conduct 11 prejudicial to the government.</p> <p>12 Did I read that correctly?</p> <p>13 A. Yes.</p> <p>14 Q. So there can be disciplinary actions if CBP 15 officers are dishonest when they are on duty; is that 16 right?</p> <p>17 A. Yes.</p> <p>18 Q. And are you aware of any instance in which 19 CBP officers have been dishonest about the metering 20 policy?</p> <p>21 A. No.</p> <p>22 Q. You yourself have always been honest about</p>
<p style="text-align: right;">Page 55</p> <p>1 A. No.</p> <p>2 Q. Are you aware of any instances in which CBP 3 officers admitted to third parties that the metering 4 policy broke the law?</p> <p>5 A. I don't believe the metering policy has 6 broken the law.</p> <p>7 Q. I understand that, but are you aware of any 8 instances in which CBP officers admitted that?</p> <p>9 A. Not that I'm aware of.</p> <p>10 Q. Let's turn to Section 6.1, which is on the 11 page that ends in 669015.</p> <p>12 A. I'm sorry, 66?</p> <p>13 Q. 9015. Should be the third page of the 14 document.</p> <p>15 A. Third page.</p> <p>16 Q. And in the bottom right, it should end in 17 901.</p> <p>18 A. Oh, I'm sorry. I'm looking in the 6.1, 19 6.2. Okay.</p> <p>20 Q. No, I get it. There's page numbers, then 21 there's Bates number --</p> <p>22 A. Got it.</p>	<p style="text-align: right;">Page 57</p> <p>1 the metering policy; is that right?</p> <p>2 A. Yes.</p> <p>3 Q. You have always been honest about the 4 purpose of the metering policy?</p> <p>5 A. Yes.</p> <p>6 Q. You've always been honest about the reasons 7 why CBP was implementing the metering policy?</p> <p>8 A. Yes.</p> <p>9 Q. In your written communications regarding 10 the metering policy, you have been honest and complete 11 about the reasons why CBP was implementing the 12 metering policy; is that correct?</p> <p>13 A. I believe so.</p> <p>14 Q. Can you think of any instance in which you 15 in your written communications about the metering 16 policy withheld material information about the purpose 17 of the policy?</p> <p>18 A. No. I would like to go back. You asked 19 the question about officers that have been dishonest 20 with the metering policy.</p> <p>21 Q. Yes.</p> <p>22 A. There have been several allegations that</p>

<p style="text-align: right;">Page 58</p> <p>1 officers have not followed the policy.</p> <p>2 Q. Correct.</p> <p>3 A. And have said things like asylum is closed</p> <p>4 and things of that nature. I'm aware of those</p> <p>5 incidences. And when we become aware of those, those</p> <p>6 have been referred to the check again.</p> <p>7 Q. You refer to those as allegations. Are</p> <p>8 those allegations or have OPR determined that those</p> <p>9 instances occurred?</p> <p>10 A. To my knowledge, they were allegations. I</p> <p>11 don't have the outcome of the OPR or the OIG</p> <p>12 investigations.</p> <p>13 Q. So they may have occurred, they may not</p> <p>14 have occurred. You just don't know as you sit here</p> <p>15 today; is that right?</p> <p>16 A. Correct.</p> <p>17 Q. Now, I'd like to move to the next -- to</p> <p>18 page Section 6.4.1, Which is on the Bates numbered</p> <p>19 page that ends in 669017. Do You see Section 6.4.1,</p> <p>20 sir?</p> <p>21 A. Yes.</p> <p>22 Q. And that's under the Section 6.4 which is</p>	<p style="text-align: right;">Page 60</p> <p>1 A. Not that I'm aware of.</p> <p>2 Q. Are you aware of any incomplete statements</p> <p>3 that have been made regarding the metering policy?</p> <p>4 A. Not that I'm aware of.</p> <p>5 Q. How about ambiguous statements? Are you</p> <p>6 aware of any ambiguous statements that have been made</p> <p>7 regarding the metering policy?</p> <p>8 A. I would say ambiguous how? I mean, some</p> <p>9 people may feel it's ambiguous or incomplete, others</p> <p>10 may not. I think that's an awful general statement.</p> <p>11 Q. Okay. Are you aware of anybody who has --</p> <p>12 any CBP employee who has ever told you that the</p> <p>13 metering policy is ambiguous?</p> <p>14 A. I know that our union representatives have</p> <p>15 asked for more clarification on the union policy.</p> <p>16 Q. The union represents you are referring to</p> <p>17 is the National Treasury Employees Union or NTEU?</p> <p>18 A. Correct.</p> <p>19 Q. Do you recall whether it was the national</p> <p>20 chapter or local chapter that asked for more clarity?</p> <p>21 A. I primarily deal with the national.</p> <p>22 Q. And the national chapter, who's the head of</p>
<p style="text-align: right;">Page 59</p> <p>1 entitled False Statements?</p> <p>2 A. Correct.</p> <p>3 Q. And 6.4.1 reads, "Employees will not</p> <p>4 knowingly make false, misleading, incomplete or</p> <p>5 ambiguous statements, whether oral or written, in</p> <p>6 connection with any matter of official interest."</p> <p>7 Did I read that correctly?</p> <p>8 A. Yes.</p> <p>9 Q. You would agree with me that the metering</p> <p>10 policy is a matter of official interest, correct?</p> <p>11 A. Yes.</p> <p>12 Q. Are you aware of any employee who has made</p> <p>13 a false statement regarding the metering policy?</p> <p>14 A. I'm not aware of that. But, again, I have</p> <p>15 30,000 employees under me. I don't know.</p> <p>16 Q. Are you aware of any instance in which an</p> <p>17 employee has made a misleading statement about the</p> <p>18 metering policy?</p> <p>19 A. Again, I am aware of allegations. And</p> <p>20 those have been referred to the JIC.</p> <p>21 Q. Besides those allegations, are you aware of</p> <p>22 any other misleading statements?</p>	<p style="text-align: right;">Page 61</p> <p>1 the national chapter?</p> <p>2 A. Tony Reardon.</p> <p>3 Q. How often do you interact with Mr. Reardon?</p> <p>4 A. Few times a year.</p> <p>5 Q. Does Mr. Reardon ever forward you e-mails</p> <p>6 regarding union activities that you should be aware</p> <p>7 of?</p> <p>8 A. Yes.</p> <p>9 Q. Does Mr. Reardon ever forward you union</p> <p>10 grievances that you should be aware of?</p> <p>11 A. Not Mr. Reardon. His vice president Jim</p> <p>12 Bailey will sometimes call my attention to a specific</p> <p>13 grievance or not.</p> <p>14 Q. How often do you interact with Mr. Bailey?</p> <p>15 A. About once a month.</p> <p>16 Q. Are those standing meetings or they just</p> <p>17 happen to happen once a month.</p> <p>18 A. No. They are mostly telephone calls as</p> <p>19 issues come up.</p> <p>20 Q. Besides Mr. Bailey and Mr. Reardon is there</p> <p>21 anybody else from the NTEU national chapter or any of</p> <p>22 the local chapters that you deal with?</p>

<p style="text-align: right;">Page 62</p> <p>1        A. From the national chapter, Jonathan Levine, 2 who is -- I'm not quite sure what his title is, but he 3 handles a lot of the CBP OFO matters. So I will 4 receive messages from him periodically, but Jim Bailey 5 is my primary contact.</p> <p>6        Q. And do you ever receive any information 7 from field offices or port directors regarding ongoing 8 grievances filed by NTEU members?</p> <p>9        A. I mean, sometimes, yes. But not every 10 grievance or matter that is filed in the field is 11 raised to my attention.</p> <p>12      Q. Sure. So it's the things that are at least 13 your deputies perceive as more important that 14 percolate up to you?</p> <p>15      A. Yes.</p> <p>16      Q. With respect to grievances?</p> <p>17      A. I would say yes.</p> <p>18      Q. It's probably the most important grievances 19 that hit your desk; is that right?</p> <p>20      A. Yes.</p> <p>21      Q. All right. Mark the next exhibit. 22      - - -</p>	<p style="text-align: right;">Page 64</p> <p>1        A. Yes.</p> <p>2        Q. You wrote the memorandum shown in Exhibit 3 23 as part of your job at CBP, correct?</p> <p>4        A. Well, my executive director for 5 Admissibility Programs would have written the initial 6 draft. I would have commented on the draft, and then 7 I would have signed the official guidance that went 8 out, so --</p> <p>9        Q. Who's the individual that would have 10 drafted this?</p> <p>11      A. Todd Hoffman.</p> <p>12      Q. And would Mr. Hoffman have received any 13 input from any of his reports, do you know?</p> <p>14      A. I don't know.</p> <p>15      Q. Do you know if Ryan Koseor had any input 16 into this guidance?</p> <p>17      A. Ryan Koseor does not work for Mr. Hoffman, 18 so I would doubt it.</p> <p>19      Q. Do you know if anybody else at CBP had any 20 input into this metering guidance?</p> <p>21      A. Mr. Hoffman's director deals with all 22 immigration matters. So subject matters on his staff</p>
<p style="text-align: right;">Page 63</p> <p>1        (A document was marked as Deposition 2 Exhibit Number 23.) 3      - - -</p> <p>4        BY MR. MEDLOCK:</p> <p>5        Q. All right, sir. I've marked as Exhibit 23 6 a one-page document. Again this is probably one you 7 are familiar with. That was previously marked in 8 another deposition in this matter as Exhibit 3.</p> <p>9        Can you please take a moment to review 10 Exhibit 23, and let know when you are done doing so.</p> <p>11      MS. SHINNERS: Exhibit 3?</p> <p>12      MR. MEDLOCK: Well, I marked it as 23 as 13 well.</p> <p>14      MS. SHINNERS: Okay.</p> <p>15      THE WITNESS: Okay.</p> <p>16      BY MR. MEDLOCK:</p> <p>17      Q. Exhibit 23 is a one-page memorandum 18 entitled Metering Guidance, that is dated April 27, 19 2018; is that right?</p> <p>20      A. Yes.</p> <p>21      Q. And the memorandum is from you; is that 22 right?</p>	<p style="text-align: right;">Page 65</p> <p>1 may very well help contribute to this.</p> <p>2        Q. But you don't know one way or the other as 3 you sit here today?</p> <p>4        A. I don't know within his staff who helped 5 draft this memo. No.</p> <p>6        Q. So this memorandum was prepared for your 7 signature; is that right?</p> <p>8        A. Yes, it was.</p> <p>9        Q. And you had the opportunity to give 10 feedback on a draft of this memorandum?</p> <p>11      A. I believe so. Yes.</p> <p>12      Q. Do you recall when in relation to April 27, 13 2018, you would have received the draft?</p> <p>14      A. No.</p> <p>15      Q. Do you recall whether you actually had any 16 edits to this memorandum?</p> <p>17      A. I don't recall.</p> <p>18      Q. You may have, you may not have. You just 19 don't recall?</p> <p>20      A. I sign a lot of memos. I don't recall on 21 this specific one I had comments on the draft or not.</p> <p>22      Q. Do you recall how long you spent reviewing</p>

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<p>1      this memo?</p> <p>2      A. No, I do not.</p> <p>3      Q. How long would you typically spend</p> <p>4      reviewing a one-page memo?</p> <p>5      A. I mean, not very long. I mean, I would</p> <p>6      look to make sure that the guidance I felt was clear</p> <p>7      from this.</p> <p>8      Q. Okay.</p> <p>9      A. So not very long.</p> <p>10     Q. When you say not very long, can you give me</p> <p>11     an estimate?</p> <p>12     A. You know maybe five or ten minutes.</p> <p>13     Q. So --</p> <p>14     A. Some documents I will review and let them</p> <p>15     sit and then come back to them and review them again</p> <p>16     with fresh eyes at a later time. I mean, I don't</p> <p>17     recall this one specifically.</p> <p>18     Q. Do you recall whether you reviewed this</p> <p>19     memorandum more than one time?</p> <p>20     A. Yes.</p> <p>21     Q. How many times did you review it?</p> <p>22     A. Prior to its issuance or since then or --</p>	<p>1      A. Yes.</p> <p>2      Q. And if I refer to this memorandum as the</p> <p>3      metering policy, you'll understand that?</p> <p>4      A. Metering guidance. Yes, sir.</p> <p>5      Q. Okay. It's your position, isn't it, sir,</p> <p>6      that the metering policy was motivated by capacity</p> <p>7      constraints at ports of entry on the Mexico border?</p> <p>8      A. In 2016 in San Ysidro. Yes.</p> <p>9      Q. Any other ports of entry where there were</p> <p>10     capacity constraints that you believe justified this</p> <p>11     memorandum?</p> <p>12     A. The metering practice started in 2016. It</p> <p>13     started in San Ysidro. As other ports were</p> <p>14     overwhelmed with the volume of migrants, then we</p> <p>15     adopted the same practice across the southwest border</p> <p>16     as needed. That was throughout 2016.</p> <p>17     In 2017, the migrant numbers subsided</p> <p>18     significantly. It was less necessary to implement</p> <p>19     metering throughout 2017. In 2018, the migrants</p> <p>20     numbers again started to increase, starting to reach a</p> <p>21     high point in the spring of 2018. That was what drove</p> <p>22     this message, this guidance across our southwest</p>
Page 67	Page 69
<p>1      Q. Prior to its issuance?</p> <p>2      A. Prior to its issuance, I don't recall.</p> <p>3      Q. You cite in this memorandum as part of your</p> <p>4      official duties as the EAC at CBP's Office of Field</p> <p>5      Operations; is that correct?</p> <p>6      A. Yes.</p> <p>7      Q. And you would have been knowledgeable about</p> <p>8      the contents of this memorandum at the time you signed</p> <p>9      it; is that right?</p> <p>10     A. Yes.</p> <p>11     Q. And you signed it on or about the date listed</p> <p>12     on the memorandum, April 27, 2018; is that right?</p> <p>13     A. Correct. On or about the date.</p> <p>14     Q. Correct.</p> <p>15     A. Because when the memos come to me, they</p> <p>16     don't have a date on them yet. And then when the</p> <p>17     executive secretaries issue it, within the next day or</p> <p>18     two that's when they date stamp it.</p> <p>19     Q. Okay. And from reviewing this memorandum,</p> <p>20     other than the fact there's been a few redactions on</p> <p>21     it, to your knowledge is this memorandum accurate and</p> <p>22     correct?</p>	<p>1      border.</p> <p>2      Q. At the time this memorandum was issued,</p> <p>3      what were the capacity -- what ports of entry were</p> <p>4      capacity constrained that you felt justified the</p> <p>5      issuance of this metering guidance?</p> <p>6      A. I don't recall specifically what ports, but</p> <p>7      our primary gateway ports in the southwest border</p> <p>8      began to experience capacity issues again throughout</p> <p>9      2016. Those would be the major ports, the San</p> <p>10     Ysidros, the Calexico, Nogales, El Paso, Laredo,</p> <p>11     Hidalgo off and on, Brownsville off and on.</p> <p>12     Q. And it's your assumption that those were</p> <p>13     the ports that were capacity constrained at that time;</p> <p>14     is that right?</p> <p>15     A. At that time, but again we have 26 ports</p> <p>16     along the southwest border, 46 actual crossings. A</p> <p>17     port of entry may have multiple crossings. El Paso</p> <p>18     has four crossings. At some point because of the</p> <p>19     migrant situation which ebbs and flows, one of those</p> <p>20     bridges might have capacity while the other three do</p> <p>21     not. It really is a very fluid situation at the ports</p> <p>22     from port to port, day to day.</p>

<p style="text-align: right;">Page 70</p> <p>1       Q. Is it your position that the metering 2 policy was not motivated by a desire to deter asylum 3 seekers from entering the U.S.?</p> <p>4       A. The policy was not desired to deter 5 migrants from entering the U.S. No, it was not.</p> <p>6       Q. And there was no communication that went to 7 any field office or port director that -- from you, 8 that would have led those field offices or port 9 directors to believe that the metering policy should 10 be used to deter asylum seekers; is that right?</p> <p>11      A. The metering policy, which again began in 12 2016, was used to address the capacity when we were 13 having large numbers of volumes.</p> <p>14      Q. And that's it?</p> <p>15      A. That's the reason we do the metering in the 16 ports of entry.</p> <p>17      Q. There's no other reason?</p> <p>18      A. No other reason.</p> <p>19      Q. So I shouldn't see any e-mails or 20 correspondence that would indicate there was another 21 reason; is that right?</p> <p>22      A. I can't speak for the whole agency.</p>	<p style="text-align: right;">Page 72</p> <p>1       there were still large numbers of migrants seeking 2 entry into the country, primarily through the gateway 3 land borders, which there would then be a need to 4 meter, as the operational needs dictated.</p> <p>5       Q. So the answer to my question is yes, there 6 was metering that occurred in 20 --</p> <p>7       A. In 2017. Yes.</p> <p>8       Q. Okay. And metering occurred in 2018 as 9 well; is that right?</p> <p>10      A. Yes.</p> <p>11      Q. And 2019 it still occurs.</p> <p>12      A. Still occurs.</p> <p>13      Q. The metering policy did have a deterrent 14 effect though, didn't it?</p> <p>15      MS. SHINNERS: Objection argumentative. 16 You can answer.</p> <p>17      A. I don't believe it had a deterrent effect. 18 When you look at the number of migrants that have come 19 in and sought refuge at the ports of entry, the flows 20 -- there have been ebbs and flows as we typically see. 21 But again, last year 126,000 migrants came in and 22 sought refuge; 124,000 the year before. So I don't</p>
<p style="text-align: right;">Page 71</p> <p>1       Q. Okay. But you would be surprised to see 2 that, wouldn't you?</p> <p>3       A. This is the official guidance that I issued 4 to the directors to cascade down through their 5 leadership. This is why we do metering, because of 6 the operational necessity based on the capacity at the 7 ports.</p> <p>8       Q. Okay. So there shouldn't be any port 9 director or CBP officer who would believe that there 10 was a policy to deter asylum seekers; is that right?</p> <p>11      A. If they are following the April 2018 memo, 12 they should not believe there's any other reason.</p> <p>13      Q. Okay. You mentioned that in 2017 the 14 migrant numbers went down; is that right?</p> <p>15      A. Correct.</p> <p>16      Q. Isn't it the case that some ports of entry 17 continued to meter, even though the number of migrants 18 went down?</p> <p>19      A. The number of migrants went down compared 20 th 2016. We had 154,000 inadmissibles in 2016. We 21 had 111,000 inadmissibles in 2017.</p> <p>22      So while the numbers did go down somewhat,</p>	<p style="text-align: right;">Page 73</p> <p>1       believe the metering had a chilling effect.</p> <p>2       Q. You were told that the metering policy had 3 a deterrent effect, weren't you?</p> <p>4       A. I was told?</p> <p>5       Q. Yes.</p> <p>6       A. I do not recall being told. I believe some 7 feel that it has a deterrent effect.</p> <p>8       Q. But you don't recall ever been told that 9 the metering policy had a deterrent effect?</p> <p>10      A. I may have. I don't recall.</p> <p>11      Q. Were you told at any point that the 12 metering policy was working because it was cutting 13 down on the number of asylum seekers that came to the 14 port of entry?</p> <p>15      A. I don't recall that.</p> <p>16      Q. Were you told that the metering policy 17 created a humanitarian disaster?</p> <p>18      A. Humanitarian disaster?</p> <p>19      Q. Yeah.</p> <p>20      A. No.</p> <p>21      Q. Do you believe that the metering policy 22 created a humanitarian disaster?</p>

<p style="text-align: right;">Page 74</p> <p>1 A. No. Disaster, no.</p> <p>2 Q. If somebody told you that the metering 3 policy created a humanitarian disaster, you would have 4 told them that's not correct; is that right?</p> <p>5 A. Well, I would tell them if that's their 6 opinion and I don't share that opinion.</p> <p>7 Q. Isn't it true that metering occurred at 8 ports of entry even when those ports have excess 9 capacity?</p> <p>10 A. You have to define capacity.</p> <p>11 Q. How do you define capacity?</p> <p>12 A. I define capacity as two parts. There is 13 the physical capacity which is the space within the 14 detention cells. Then there's the operational 15 capacity which takes into consideration such things as 16 the demographics of those in custody, the conditions 17 of those in custody T, the issues and sickness issues, 18 the other operational priorities as to how the 19 resources in the ports are being directed that day, 20 all of these other day-to-day operational 21 considerations which may keep a port from reaching the 22 full physical space that they have.</p>	<p style="text-align: right;">Page 76</p> <p>1 Q. And if you wanted to intentionally lower 2 the operational capacity to process migrants, you 3 could assign more front-line officers to those other 4 missions; is that right?</p> <p>5 MS. SHINNERS: Objection. Argumentative. 6 You can answer.</p> <p>7 A. The capacity drives the decisions. And, 8 again, the capacity is not just the physical space but 9 the operational aspects of what's taking place. There 10 are certain priority missions within CBP that we do 11 not pull officers off of to process the migrants. We 12 will not sacrifice the counter-terrorism mission. We 13 will not sacrifice the narcotics mission.</p> <p>14 We would not reassign officers from those 15 key missions to process more migrants.</p> <p>16 Q. But you have a legal duty to process asylum 17 seekers, right?</p> <p>18 A. And we do.</p> <p>19 Q. And so but you won't sacrifice the 20 counter-terrorism mission and the narcotics mission to 21 process asylum seekers; is that right?</p> <p>22 A. I will not redirect resources from those</p>
<p style="text-align: right;">Page 75</p> <p>1 Q. So if a port decides to prioritize other 2 matters over processing migrants without proper travel 3 documents, they may have a lower operational capacity; 4 is that right?</p> <p>5 A. Could you repeat that question.</p> <p>6 Q. Sure.</p> <p>7 A. Trying to follow.</p> <p>8 Q. If as a policy matter a port decides that 9 they are going to prioritize other missions besides 10 inspecting and processing individuals that don't have 11 proper travel documents, that port will effectively 12 have a lower operational capacity; is that right?</p> <p>13 A. Correct. The finite resources that we have 14 are directed amongst multiple priorities in the ports 15 of entry. The more you direct towards narcotics 16 intradiction or the counter-terrorism threat means 17 there's less to do other things in, whether that's the 18 migrant processing, the trade enforcement, the 19 agriculture mission. The full scope of what we do at 20 the ports of entry, if you push resources in one area, 21 there will be less resources in other areas including 22 migrant process.</p>	<p style="text-align: right;">Page 77</p> <p>1 priority missions to process migrants quicker.</p> <p>2 Q. Do you believe that counter-terrorism and 3 anti-narcotics are higher priority missions than 4 processing asylum seekers?</p> <p>5 A. Yes, I do.</p> <p>6 Q. Do you believe that having a orderly flow 7 of trade is a higher priority mission than processing 8 asylum seekers?</p> <p>9 A. Yes, I do.</p> <p>10 Q. Do you ever interact with individuals in 11 the Mexican government?</p> <p>12 A. Yes.</p> <p>13 Q. Have you ever -- do you know of an agency 14 in the Mexican government called INM or --</p> <p>15 A. INAMI.</p> <p>16 Q. -- or INAMI?</p> <p>17 A. Yes. It's Mexican immigration.</p> <p>18 Q. Have you ever interacted with the 19 commissioner of INAMI?</p> <p>20 A. No.</p> <p>21 Q. Do you know of a commissioner of INAMI 22 called Commissioner Vargas?</p>

<p style="text-align: right;">Page 78</p> <p>1 A. I believe I recall the name.      2 Q. Okay. Did you ever receive any e-mail      3 traffic regarding Commissioner Vargas?      4 A. Generally, I -- can you be more specific?      5 Q. Well, let me ask it this way, CBP has      6 liaison units for foreign governments, correct?      7 A. Correct.      8 Q. And one of those liaison -- some of those      9 liaison units are stationed in Mexico City; is that      10 right?      11 A. Yes.      12 Q. And they interact with -- those liaison      13 units interact with agencies in the Mexican      14 government, correct?      15 A. Correct.      16 Q. Including INAMI, right?      17 A. Correct.      18 Q. And that would also include interactions      19 with the commissioner of INAMI, correct?      20 A. Correct.      21 Q. And as the EAC, occasionally you would get      22 communications from the liaison unit regarding the</p>	<p style="text-align: right;">Page 80</p> <p>1 A. Yes.      2 Q. The MCAT and queue management reports, do      3 they list operational capacities in those reports?      4 A. They list the physical capacity in those      5 reports.      6 Q. And do they give commentary occasionally on      7 operational capacity issues?      8 A. Occasionally.      9 Q. And occasionally those MCAT reports will      10 say whether there are issues that are affecting the      11 port at the time; is that right?      12 A. They may.      13 Q. Okay. Isn't it true that metering has      14 occurred at ports of entry even when those ports      15 reported that the number of asylum seekers that were      16 being processed had no impact on port operations?      17 MS. SHINNERS: Objection as to      18 characterization of form. You can answer.      19 A. I'm not sure I understand the question.      20 Q. Sure. The MCAT reports will occasionally      21 have a column that lists whether there is an impact to      22 port operations based on the number of migrants that</p>
<p style="text-align: right;">Page 79</p> <p>1 interactions with the Commissioner of INAMI; is that      2 right?      3 A. I would receive meetings -- messages on      4 discussions that may have taken place on operational      5 issues. Those are usually sent through the leadership      6 then cascaded down. So I would see e-mails like that,      7 but I don't communicate directly with Commissioner      8 Vargas.      9 Q. Okay. Do you have any opinion about      10 whether Commissioner Vargas is an honest man?      11 A. I don't know the man.      12 Q. Do you believe that INAMI as an agency --      13 it to be dishonest in its interactions with CBP?      14 A. Dishonest with its interactions with CBP?      15 I don't engage with them directly enough to have an      16 opinion.      17 Q. Has anybody ever told you that INAMI has      18 been dishonest with respect to CBP?      19 A. Dishonest with respect to CBP, no.      20 Q. We talked a little bit about the MCAT and      21 queue management reports that you said gave an      22 operational snapshot. Do you recall that?</p>	<p style="text-align: right;">Page 81</p> <p>1 are being processed; correct?      2 A. That column is more inclusive than simply      3 the number of migrants that may be impacting the port      4 operations.      5 Q. Sure. So there are times at which people      6 -- the reports will say that people are being held at      7 the boundary line, even though there's no impact to      8 port operations; is that right?      9 MS. SHINNERS: Objection. Assumes facts      10 not in evidence. Are you referring to the MCAT      11 report?      12 BY MR. MEDLOCK: you know what, I'll make      13 those facts in evidence. Hold on one second.      14 MS. SHINNERS: That's fine, I just --      15 MR. MEDLOCK: No. No. That's fine. I get      16 it. Let's go ahead and mark this next exhibit.      17 - - -      18 (A document was marked as Deposition      19 Exhibit Number 24.)      20 - - -      21 BY MR. MEDLOCK:      22 Q. Sir, I put in front of you what we marked</p>

<p style="text-align: right;">Page 82</p> <p>1 as Exhibit 24 to your deposition. It's a two-page      2 e-mail that begins with the Bates number      3 AOL-DEF-00088501 through '502. Please take a moment      4 to review it, and let me know when you are done doing      5 so.</p> <p>6 A. Okay.</p> <p>7 Q. All right. So this is a June 19, 2018      8 e-mail chain between Randy Howe, Ryan Koseor, yourself      9 and others; is that right?</p> <p>10 A. Yes.</p> <p>11 Q. And you received the top e-mail in this      12 chain; correct, sir?</p> <p>13 A. Yes.</p> <p>14 Q. You received that e-mail on or about June      15 19, 2018, at 4:22 p.m.; is that right?</p> <p>16 A. According to this document, yes.</p> <p>17 Q. And if you look on the second page, it      18 looks like you may have printed this e-mail out and      19 circled the number; is that right?</p> <p>20 A. May have.</p> <p>21 Q. You would have received this e-mail,      22 Exhibit 24, in the course of your duties at CBP,</p>	<p style="text-align: right;">Page 84</p> <p>1 Q. Okay. The e-mail below the top, the      2 subject line on that e-mail is: Field Office, Queue      3 Management, 6/19/2018, correct?</p> <p>4 A. June 19, 2018. Yes.</p> <p>5 Q. Okay. And that's sent by Ryan Koseor?</p> <p>6 A. Yes.</p> <p>7 Q. Who's the deputy commander for the      8 Migration Crisis Action Team; is that right?</p> <p>9 A. In 2018, he was.</p> <p>10 Q. Okay. And on there's a table in of Mr.      11 Koseor's e-mail; is that right?</p> <p>12 A. Yes.</p> <p>13 Q. And the -- there are various columns that      14 go from left to right on the e-mail, on the table; is      15 that right?</p> <p>16 A. Yes.</p> <p>17 Q. From left to right, those columns are      18 labeled: Field Office, Port, Total Number of      19 Detainees, Percentage of Capacity, Number in Queue at      20 Boundary Line, and Impact to Port Operations; is that      21 right?</p> <p>22 A. Yes.</p>
<p style="text-align: right;">Page 83</p> <p>1 correct?</p> <p>2 A. Yes.</p> <p>3 Q. You would have been knowledgeable about the      4 contents of this e-mail at the time you received it,      5 correct?</p> <p>6 A. In terms of knowledgeable of the contents?</p> <p>7 Q. Yes. When you received it?</p> <p>8 A. I'm not sure I understand, because there's      9 a whole lot that goes in behind these reports that I'm      10 not knowledgeable of.</p> <p>11 Q. But you would have been knowledgeable about      12 what's said in e-mail at the time you received it; is      13 that right?</p> <p>14 A. I'm still not following.</p> <p>15 Q. You would have read and understood this      16 e-mail at the time you received it?</p> <p>17 A. I would have read and understood this      18 report. Yes.</p> <p>19 Q. Okay. And you would have received this      20 e-mail on or about the time listed on the top e-mail,      21 June 19, 2018 at 4:22 p.m.?</p> <p>22 A. Yes.</p>	<p style="text-align: right;">Page 85</p> <p>1 Q. And at the top of that -- of those columns,      2 there's another sort of column that runs across the      3 top that says: Report Date, June 19, 2018. Do you      4 see that?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. So I want to focus on the San Ysidro      7 Port Of Entry. Do you see that entry?</p> <p>8 A. Yes.</p> <p>9 Q. And the San Ysidro Port of Entry is one of      10 the gateway ports that you listed?</p> <p>11 A. Correct.</p> <p>12 Q. How many gateway ports are there on the      13 southwestern border?</p> <p>14 A. I would say the major ports would be San      15 Ysidro, Calexico, Nogales, El Paso, Laredo;      16 Brownsville, Hidalgo, somewhat gateways.</p> <p>17 Q. They might be a gateway?</p> <p>18 A. They might, you know, they are kind of the      19 next band.</p> <p>20 Q. Okay. Have you ever heard the term Class A      21 Port of Entry?</p> <p>22 A. Yes.</p>

<p style="text-align: right;">Page 86</p> <p>1 Q. What's a Class A Port of Entry?</p> <p>2 A. Class A Port is generally a port that can</p> <p>3 handle all CBP functions.</p> <p>4 Q. And there are also Class B and Class C</p> <p>5 ports?</p> <p>6 A. There are Class Bs and Cs.</p> <p>7 Q. What's the difference between a Class A</p> <p>8 Port of Entry and a Class B Port of Entry?</p> <p>9 A. Deals with what they can handle, whether</p> <p>10 they handle the full scope of CBP operations. They</p> <p>11 may only handle cargo. They may only handle certain</p> <p>12 types of cargo. It differentiates those.</p> <p>13 Q. As a general matter, does a Class B Port</p> <p>14 of Entry not have an AEU?</p> <p>15 A. As a general matter, a Class B port does</p> <p>16 not have an AEU, AEU meaning the Admissibility</p> <p>17 Enforcement Unit?</p> <p>18 Q. Correct.</p> <p>19 A. Your larger ports have admissibility units.</p> <p>20 They are called different things. But most of your</p> <p>21 larger ports that are either Class As or Class Bs</p> <p>22 would have individuals trained to deal with migrant</p>	<p style="text-align: right;">Page 88</p> <p>1 again. It lists the total number of detainees as 236;</p> <p>2 is that right?</p> <p>3 A. Yes.</p> <p>4 Q. And the percentage of capacity is 75</p> <p>5 percent; is that right?</p> <p>6 A. Yes.</p> <p>7 Q. And that's -- you are saying that that is</p> <p>8 not operational, but that's physical?</p> <p>9 A. That's physical. San Ysidro has 315</p> <p>10 holding positions, if you will, within their 31 cells.</p> <p>11 Q. Okay.</p> <p>12 A. So I would think 236 out of 315 is probably</p> <p>13 75 percent?</p> <p>14 Q. Your math might be better than mine.</p> <p>15 That's why I'm a lawyer.</p> <p>16 The number in K at boundary line is listed</p> <p>17 as 950, and then parentheses, in Mexico; do you see</p> <p>18 that?</p> <p>19 A. Yes.</p> <p>20 Q. And you understand that to mean there are</p> <p>21 950 individuals waiting in shelters in Mexico to be</p> <p>22 processed at the port of entry; is that right?</p>
<p style="text-align: right;">Page 87</p> <p>1 processing. Yes.</p> <p>2 Q. And do Class A and Class B ports both --</p> <p>3 are they both able to process pedestrian traffic?</p> <p>4 A. I don't recall. I would assume so.</p> <p>5 Q. Okay.</p> <p>6 A. I don't recall. I mean, those are the</p> <p>7 larger ports. Now whether they even have pedestrian</p> <p>8 traffic, I don't know.</p> <p>9 Q. Right. Okay. Have you ever heard of an</p> <p>10 effort to create a Class D Port of Entry?</p> <p>11 A. Yes.</p> <p>12 Q. What was the effort to create a Class D</p> <p>13 part of entry about?</p> <p>14 MS. SHINNERS: Objection to the extent it</p> <p>15 causes you to reveal pre-decisional deliberations,</p> <p>16 especially if there's a non-final policy?</p> <p>17 A. There's a non-final policy on that</p> <p>18 discussion.</p> <p>19 Q. Okay. So you are not going to testify</p> <p>20 about that today?</p> <p>21 A. No.</p> <p>22 Q. Okay. Let's look at the San Ysidro entry</p>	<p style="text-align: right;">Page 89</p> <p>1 A. Those are approximates, based on what we</p> <p>2 receive from the Mexican authorities.</p> <p>3 Q. Okay. From INAMI and Grupo Beta?</p> <p>4 A. Or the NGOs, whoever is controlling the</p> <p>5 process on the Mexican side.</p> <p>6 Q. And then to the right of that, there is a</p> <p>7 column that says, Impact to Port Operation. You see</p> <p>8 that?</p> <p>9 A. Yes.</p> <p>10 Q. And for San Ysidro it lists no impact,</p> <p>11 correct?</p> <p>12 A. Correct.</p> <p>13 Q. And in fact -- so there's 950 people that</p> <p>14 are believed to be in the queue, but there's impact to</p> <p>15 port operations; is that right?</p> <p>16 A. Correct.</p> <p>17 Q. For Calexico, this is one of the other</p> <p>18 gateway ports you mentioned; is that right?</p> <p>19 A. Yes.</p> <p>20 Q. There are a total number of 50 detainees</p> <p>21 listed here?</p> <p>22 A. Yes.</p>

<p style="text-align: right;">Page 90</p> <p>1 Q. And that is 74 percent of you were saying 2 physical capacity; is that right? 3 A. Yes. 4 Q. And there are 32 that are in the queue at 5 the boundary line? 6 A. Correct. 7 Q. And it lists no impact to port operations. 8 Is that right? 9 A. Yes. 10 Q. All right. Do you see the Brownsville Port 11 of Entry? 12 A. Yes. 13 Q. On the second page? 14 A. Yes. 15 Q. Okay. And this is going to require 16 probably a little bit of flipping to the top of the 17 column to refresh your recollection here, but the 18 total number of detainees listed is six; is that 19 right? 20 A. Yes. 21 Q. And that's 17 percent of capacity; is that 22 right?</p>	<p style="text-align: right;">Page 92</p> <p>1 Q. Those would be in instances of misconduct 2 where people weren't following the policy; is that 3 right? 4 A. Yes. 5 Q. As part of the metering policy, ports of 6 entry, directors of ports of entry on the U.S.-Mexico 7 border were able to create limit line positions; is 8 that right? 9 A. In 2018, yes. 10 Q. Okay. So beginning of 2018 those limit 11 line positions were created by some ports of entry; is 12 that right? 13 A. In 2018, we started to station officers at 14 the limit line. 15 Q. Okay. In some ports of entry were officers 16 a few feet back of the limit line? 17 A. Yes. 18 Q. Which ports of entry would those be? 19 A. Tecate and Otay Mesa for a short period of 20 time. 21 Q. Any others? 22 A. Not that I'm aware of.</p>
<p style="text-align: right;">Page 91</p> <p>1 A. Yes. 2 Q. And there are 19 individuals -- migrants at 3 the boundary line, correct? 4 A. Correct. 5 Q. And under impact -- 6 MS. SHINNERS: Objection. Just to clarify, 7 you are stating what's listed in the report? 8 Q. That's correct. And then impact to port 9 operations it lists none; is that right? 10 A. Yes. 11 Q. Okay. So there are in fact instances where 12 these snapshots that are taken by the MCAT, it lists 13 no impact to port operations. And less than 100 14 percent physical capacity where there are individuals 15 being held at the boundary lines; is that right? 16 A. Yes. 17 Q. Okay. Isn't it true that the metering 18 policy was being used to return individuals who 19 entered the U.S. back to Mexico? 20 A. There were issues of misconduct where 21 individuals that had stepped foot on U.S. soil were 22 returned back.</p>	<p style="text-align: right;">Page 93</p> <p>1 Q. And so at Tecate and Otay Mesa, a 2 individual without proper documents -- proper travel 3 documents would actually cross the boundary line and 4 then come up to -- potentially come up to the limit 5 line position before they interacted with the CBP 6 officer; is that correct? 7 A. In Tecate, the canopy that was erected to 8 protect the officers from the elements was about ten 9 feet over the limit line. So, theoretically, 10 individuals could have stepped within those 10 feet. 11 In Otay Mesa, the jersey barrier that was 12 placed to secure the officers from a car that may try 13 to veer towards them was placed just a few feet across 14 the limit line. 15 Q. Right. 16 A. Those individuals probably did not cross. 17 They probably could have handed the documents right at 18 the limit line. 19 Q. When you say a few feet, how far? 20 A. A few feet, literally a few feet. 21 Q. Like two feet, three feet? 22 A. Probably about three or four feet.</p>

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<p>1 Q. Do you know any individual with three-feet 2 arm, three-foot arms?</p> <p>3 A. No.</p> <p>4 Q. Okay. So let's just be straight here.</p> <p>5 A. Well, let me also be clear, though, that 6 our officers may not have been standing behind the 7 jersey barriers at three or four, five feet, and they 8 could have walked up to the limit line.</p> <p>9 Q. Do you know -- it's possible, right, that 10 asylum seekers walked onto U.S. soil at Otay Mesa and 11 interacted with a CBP officer before they -- when they 12 got to the limit line position, isn't it?</p> <p>13 A. It's possible over the past four years, 14 depending on where those officers with stationed 15 throughout the day.</p> <p>16 Q. You can't rule it out as you sit here today?</p> <p>17 A. I can't rule it out.</p> <p>18 Q. Have you ever asked?</p> <p>19 A. Yes.</p> <p>20 Q. And have you ever been told that asylum seekers stepped onto U.S. soil at Otay Mesa before</p>	<p>1 they were directed back to Mexican soil; is that 2 right?</p> <p>3 A. Again, I don't know that, because the 4 officers could have physically been stationed at the 5 limit line, even though the jersey barrier was several 6 feet in.</p> <p>7 Q. But as you sit here today, you can't 8 actually rule that out?</p> <p>9 A. I can't rule that out.</p> <p>10 Q. Okay. And -- sorry?</p> <p>11 MS. SHINNERS: I have to visit the 12 restroom. Is it okay if we take a break?</p> <p>13 MR. MEDLOCK: We can take a break. 14 - - -</p> <p>15 (Recessed at 10:56 a.m.) 16 (Reconvened at 11:08 a.m.) 17 - - -</p> <p>18 BY MR. MEDLOCK: 19 Q. Sir, welcome back. I understand that you 20 had a few points you wanted to clarify about your 21 deposition?</p> <p>22 A. Yes. I just want to correct on my prep</p>
Page 95	Page 97
<p>1 they were turned back to Mexico?</p> <p>2 A. We had an issue at Otay Mesa with a 3 congressional representative who brought migrants 4 back. And that is when it became aware that the 5 officers needed to reposition closer to the limit line.</p> <p>7 Q. Who was that Congressional representative?</p> <p>8 A. I don't recall.</p> <p>9 Q. When did that occur?</p> <p>10 A. Sometime within the last twelve months, 11 five, six months ago, perhaps. No. Wait. It was 12 earlier than that. I believe it would have been last 13 summer, summer of 2018, perhaps the fall.</p> <p>14 Q. Okay. So there was a period between April 15 2018 and the summer of 2018 when this issue at Otay 16 Mesa had not been brought to your attention; is that 17 right?</p> <p>18 A. Correct.</p> <p>19 Q. And during that time period before the 20 officers were restationed, asylum seekers that came to 21 the limit line position at Otay Mesa may have stepped onto U.S. soil to interact with a CBP officer before</p>	<p>1 session, it was actually with the DOJ and the OCC 2 lawyers on Wednesday, not Thursday.</p> <p>3 Q. Okay.</p> <p>4 A. And it was with the CBP counsel on Tuesday, 5 not Wednesday.</p> <p>6 Q. Okay.</p> <p>7 A. And at the Tuesday session, it was only 8 with Christine. Louisa was at the Wednesday session, 9 but she left early, which is what I got confused with. 10 So I was off by a day with those prep sessions.</p> <p>11 Q. Let me see if I get all that. There was no 12 prep on Thursday.</p> <p>13 A. There was no prep on Thursday.</p> <p>14 Q. There was on Wednesday and Tuesday, 15 correct?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Okay. Thank you for clarifying. I 18 appreciate it.</p> <p>19 Could you turn back for a second to Exhibit 20 23, the copy --</p> <p>21 A. Yes.</p> <p>22 Q. -- of the metering policy. There's no</p>

<p style="text-align: right;">Page 98</p> <p>1 reference in the metering policy to deterrents 2 anywhere in there right? It doesn't even use the 3 words; is that right?</p> <p>4 A. No.</p> <p>5 Q. So the metering policy doesn't say one way 6 or another whether the purpose of it is to deter 7 people; is that right?</p> <p>8 A. Deterrence is not mentioned in the 9 deposition.</p> <p>10 Q. Sure. So someone reading the document 11 would not know whether the metering guidance is aimed 12 at deterrence; is that right?</p> <p>13 MS. SHINNERS: Objection. Calls for 14 speculation. You can answer.</p> <p>15 A. I would think that the officers, the 16 leadership that read this are clear that this is being 17 done for operational reasons. And it also very 18 clearly outlines that we are not to discourage a 19 travel waiting to be processed from claiming fear or 20 seeking other protections.</p> <p>21 It's also very clear that once a traveler 22 is in the U.S., he or she must be fully processed.</p>	<p style="text-align: right;">Page 100</p> <p>1 operational purposes, not for deterrence. 2 Q. We talked about this a little bit earlier, 3 some ports of entry began metering before April 2018; 4 is that right?</p> <p>5 A. We began metering in the early part of 6 2016.</p> <p>7 Q. In fact that metering started at the San 8 Ysidro Port of Entry?</p> <p>9 A. It started at San Ysidro to deal with the 10 influx of Haitians.</p> <p>11 Q. And that began in May 2016; is that right?</p> <p>12 A. It was the early part of '16, April, May.</p> <p>13 Q. Was it on Memorial Day?</p> <p>14 A. I believe it was before Memorial Day, but I 15 don't recall specifically.</p> <p>16 Q. All right. Let me see if I can refresh 17 your recollection.</p> <p>18 - - -</p> <p>19 (A document was marked as Deposition 20 Exhibit Number 25.)</p> <p>21 - - -</p> <p>22 BY MR. MEDLOCK:</p>
<p style="text-align: right;">Page 99</p> <p>1 That is the guidance from this.</p> <p>2 Q. Okay. So my question was -- and maybe I 3 can ask it little bit better, the metering guidance 4 memo here in front of you does not take a position one 5 way or another in the written words that are used 6 about whether the policy is being driven by a 7 deterrence rationale?</p> <p>8 A. The memo states the policy's been written 9 to ensure the orderly processing and security and 10 safety of the ports.</p> <p>11 Q. Does it say that that's the only reason?</p> <p>12 MS. SHINNERS: Objection. Document speaks 13 for itself. You can answer.</p> <p>14 A. That is what's in the document. There's no 15 reference to deterrents throughout the document.</p> <p>16 Q. So it's your view that the metering 17 guidance that is in this April 27, 2018 memorandum at 18 Exhibit 23, the exclusive reason for metering are the 19 operational reasons stated in the memorandum; is that 20 right?</p> <p>21 A. Yes. The memo that I signed, the direction 22 for guidance or the direction for metering is done for</p>	<p style="text-align: right;">Page 101</p> <p>1 Q. All right, sir. I've put in front of you a 2 multi-page e-mail, two-page e-mail marked as Exhibit 3 25 to your deposition. The leading Bates number on 4 the document is AOL-DEF-00328857.</p> <p>5 Please take a moment to flip through it.</p> <p>6 And when you are done doing so, please let me know.</p> <p>7 And while you are doing that, we had 8 somebody join us on the phone. Could you please enter 9 your appearance.</p> <p>10 MR. FENN: Hi. This is Matt Fenn from 11 Mayer Brown.</p> <p>12 MR. MEDLOCK: Thank you.</p> <p>13 THE WITNESS: Okay.</p> <p>14 BY MR. MEDLOCK:</p> <p>15 Q. All right. And Exhibit 25 is an August 2, 16 2017 e-mail chain between Robert Hood, Sidney Aki, 17 Johnny Armijo and others; is that correct?</p> <p>18 A. Yes.</p> <p>19 Q. Who is Robert W. Hood?</p> <p>20 A. Robert Hood is one of the assistant port 21 directors at the port of San Ysidro.</p> <p>22 Q. And Sidney Aki is the port director?</p>

<p style="text-align: right;">Page 102</p> <p>1 A. He's the port director.      2 Q. At San Ysidro?      3 A. At San Ysidro.      4 Q. And what is Johnny Armijo's position, if      5 you know?      6 A. Johnny Armijo was assigned to the field      7 office. He's held various positions. This one he's      8 the assistant director. He had been the border      9 security. He's in leadership at the field office.      10 Q. When you say the field office, you mean the      11 San Diego field office?      12 A. The San Diego field office.      13 Q. Okay. the subject line in this e-mail      14 reads, RE: Interview with OIG Special Agents.      15 Do you see that?      16 A. Yes.      17 Q. And if you look down in Mr. Armijo's August      18 2, 2017 e-mail from 5:50 p.m., the bottom e-mail in      19 the chain; do you see that e-mail?      20 A. Yes.      21 Q. The number 3 on the list of topics in the      22 e-mail is metering start and stop frames. And then</p>	<p style="text-align: right;">Page 104</p> <p>1 MS. SHINNERS: Objection. Improper      2 refreshing of recollection. Continue.      3 Q. Go ahead.      4 A. I still seem to think it started around      5 April or May.      6 Q. Okay.      7 A. To my recollection, in San Ysidro at the      8 time, we were having the influx of Haitians. The port      9 was under construction. We had lost holding capacity.      10 I remember having discussions with the DFO about them      11 needing to control the flow into the port.      12 I thought it was around April, May. This      13 document seems to indicate the end of May.      14 Q. Okay. So the answer to my question is you      15 think it began sometime around April or May?      16 A. I think it began in April or May.      17 Q. Of 2016. Is that right?      18 A. Yes, sir.      19 Q. Okay. Let's mark the next exhibit.      20 - - -      21 (A document was marked as Deposition      22 Exhibit Number 26.)</p>
<p style="text-align: right;">Page 103</p> <p>1 below that in a bullet he writes, quote, I indicated      2 the first week of June 2016 at the start, and the      3 first week of February 2017 at the stop.      4 Did I read that correctly?      5 A. Yes.      6 Q. And then Sidney Aki, who was the port      7 director, responds to Mr. Armijo's e-mail; is that      8 right?      9 A. Yes.      10 Q. And he writes, Johnny, I believe the      11 metering started in May 2016. THX. Or thanks.      12 Did I read that correctly?      13 A. Yes.      14 Q. And then Mr. Hood responds to Mr. Aki's      15 e-mail writing, quote, Correct. I think right before      16 Memorial Day in May 2016, 5/24. Question mark. Did I      17 read that correctly?      18 A. Yes.      19 Q. Does this refresh your recollection that      20 the metering began sometime around Memorial Day      21 weekend in 2016?      22 A. Yes.</p>	<p style="text-align: right;">Page 105</p> <p>1 - - -      2 BY MR. MEDLOCK:      3 Q. All right, sir. I've put in front of you      4 Exhibit 26 to your deposition. It is a two-page      5 e-mail bearing the Bates number AOL-DEF-00761338      6 through 39.      7 Please take a moment to review the e-mail,      8 and let me know audibly when you are done doing so.      9 A. Okay.      10 Q. All right. So Exhibit 26 is a May 25      11 through 26, 2016 e-mail chain between yourself, Carlos      12 Martel, John Wagner, Todd Hoffman and others; is that      13 correct?      14 A. Correct.      15 Q. And you would have received this e-mail as      16 part of your job at CBP; is that right?      17 A. Correct.      18 Q. And you would have read and understood the      19 contents of this e-mail at or about the time that you      20 received it; is that right?      21 A. Yes.      22 Q. And in reviewing this e-mail chain, you</p>

<p style="text-align: right;">Page 106</p> <p>1 believe it to be accurate and complete; is that right?</p> <p>2 A. Yes.</p> <p>3 Q. And you would have received the e-mails in</p> <p>4 this chain on or about the dates listed in the</p> <p>5 e-mails; is that right?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. The e-mail chain starts with an</p> <p>8 e-mail from Johnny Armijo, who we were just talking</p> <p>9 about, on May 26, 2016, at 1:59 a.m. Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And Mr. Armijo at the beginning of</p> <p>12 the e-mail notes that the San Diego field office has</p> <p>13 received media requests regarding an increased number</p> <p>14 of credible fear, slash, asylum applicants at the San</p> <p>15 Ysidro point of entry; is that right?</p> <p>16 A. Correct.</p> <p>17 Q. And if you look at the second page of the</p> <p>18 document, the Bates Number 761339, Mr. Armijo states</p> <p>19 that the San Ysidro, slash, Otay Mesa AEU, or</p> <p>20 Admissibility Enforcement Unit, has exceeded its</p> <p>21 temporary detention capabilities, correct?</p> <p>22 A. Correct.</p>	<p style="text-align: right;">Page 108</p> <p>1 A. Immigration and Customs Enforcement.</p> <p>2 Enforcement Removal Office is what I believe they are</p> <p>3 still called by ERO.</p> <p>4 Q. And transfer to ICE-ERO means transfer to</p> <p>5 an ICE detention facility; is that --</p> <p>6 A. Right. Once we complete the processing in</p> <p>7 our temporary facilities, we transfer them to ICE-ERO</p> <p>8 comes and picks them up and takes them to a</p> <p>9 longer-term detention facility.</p> <p>10 Q. When you say "them" you mean asylum</p> <p>11 seekers?</p> <p>12 A. The migrants. Yes, sir. The asylum</p> <p>13 seekers.</p> <p>14 Q. And when an individual comes to a port of</p> <p>15 entry and expresses a credible fear, a CBP officer in</p> <p>16 secondary has -- can take several steps to process</p> <p>17 that individual, correct?</p> <p>18 MS. SHINNERS: Object to the use of the</p> <p>19 term credible fear. You can answer.</p> <p>20 A. When the asylum seekers come in, the CBP</p> <p>21 officer begins the process. We are the initial intake</p> <p>22 face.</p>
<p style="text-align: right;">Page 107</p> <p>1 Q. And then he goes on to list remedies that</p> <p>2 have been undertaken to create additional space; is</p> <p>3 that right?</p> <p>4 A. Correct.</p> <p>5 Q. Okay. The first remedy he lists is, quote,</p> <p>6 utilized several border patrol stations to temporarily</p> <p>7 house -- hold detainees awaiting transfer to ICE-ERO.</p> <p>8 Did I read that correctly?</p> <p>9 A. Yes.</p> <p>10 Q. So in the -- near San Ysidro, that would be</p> <p>11 the Imperial Beach Border Patrol Station?</p> <p>12 A. Yes.</p> <p>13 Q. And would there be other border patrol</p> <p>14 stations would have been utilized?</p> <p>15 A. I'm not that familiar with the border</p> <p>16 patrol structure throughout San Diego, but Imperial</p> <p>17 Beach Station One, as they call it, is the primary.</p> <p>18 Q. And then there are substations near --</p> <p>19 A. There are substations. There's check</p> <p>20 points, there's other facilities.</p> <p>21 Q. And ICE-ERO, can you define what that</p> <p>22 means?</p>	<p style="text-align: right;">Page 109</p> <p>1 Q. Correct. An asylum seeker could get a</p> <p>2 notice to appear, correct?</p> <p>3 A. They could. Correct.</p> <p>4 Q. They could be paroled into the United</p> <p>5 States, correct?</p> <p>6 A. They could be.</p> <p>7 Q. And they could also be put into expedited</p> <p>8 removal proceedings and then detained?</p> <p>9 A. And held in detention by ERO. Yes.</p> <p>10 Q. So those are three options that are</p> <p>11 available when an individual without proper travel</p> <p>12 documentation comes to a port of entry and expresses a</p> <p>13 credible fear of persecution?</p> <p>14 A. Can you list the three you mentioned again?</p> <p>15 Q. Notice to appear.</p> <p>16 A. Yes.</p> <p>17 Q. Parole.</p> <p>18 A. Parole.</p> <p>19 Q. And expedited removal and detention.</p> <p>20 A. If the individual is claiming fear. Yes.</p> <p>21 Q. But all those are options that are</p> <p>22 available?</p>

<p style="text-align: right;">Page 110</p> <p>1 A. All those are options.      2 Q. Okay. The second -- the second remedy that      3 is listed in Mr. Armijo's e-mail is, "Transferred all      4 accompanied and unaccompanied unit processing to the      5 Old Port overflow processing area."      6 Did I read that correctly?      7 A. Yes.      8 Q. The Old Port refers to the older part of      9 part of the port of San Ysidro, correct?      10 A. Correct.      11 Q. The next remedy that is listed here is,      12 quote, Transferred all permit, open parens, I-94,      13 closed parens, processing to the Otay Mesa Port of      14 Entry in order to secure additional workstations to      15 conduct in-person or virtual interviews.      16 Did I read that correctly?      17 A. Correct.      18 Q. Can you explain what I-94 permit processing      19 is?      20 A. I-94 is a permit, a authorization to travel      21 beyond the border zone by Mexican citizens primarily      22 through San Ysidro, Otay Mesa.</p>	<p style="text-align: right;">Page 112</p> <p>1 Q. There's a reference here to virtual      2 interviews. What does that mean?      3 A. Virtual interviews is something that Border      4 patrol primarily does where you can set up the migrant      5 seeker. That initial Q and A, that a question and      6 answer, the sworn statement can be done through a      7 video conference with an officer or agent that is      8 stationed somewhere else.      9 Q. CBP has utilized virtual interviews in the      10 past, hasn't it?      11 A. Border Patrol primarily uses --      12 Q. I understand they primarily use it, but      13 hasn't CBP done it?      14 A. Well, CBP is border patrol. We are one and      15 the same.      16 Q. I'm sorry. OFO has done it, has used it?      17 A. We have done it in a much less extent.      18 Yes.      19 Q. OFO has used virtual interviews at ports of      20 entry, correct?      21 A. Correct.      22 Q. OFO has used virtual interviews for</p>
<p style="text-align: right;">Page 111</p> <p>1 Q. Okay. And when the reference to secure      2 additional workstations. That refers to workstations      3 in the secondary inspection processing area, correct?      4 MS. SHINNERS: Objection. Foundation.      5 Continue.      6 A. As I recall, at the time in 2016 the      7 permits, the I-94s were being issued out of the Old      8 Port building. So in relation to the second bullet      9 and the third bullet, it would make sense to me that      10 they would have moved the processing of the I-94s out      11 of the Old Port building to Otay Mesa.      12 Q. To make space.      13 A. Which would have created more space in the      14 Old Port building. Thus the reference to workstations      15 and such, as I recall. In 2016, San Ysidro was      16 undergoing the construction. Different parts of it      17 were being torn down. We used temporary trailers for      18 a while.      19 We had a reduction in the overall      20 detention space. And the port management was trying      21 to make work arounds throughout all of this      22 construction.</p>	<p style="text-align: right;">Page 113</p> <p>1 individuals expressing incredible fear and      2 persecution, correct?      3 A. To my recollection.      4 Q. OFO has used virtual interviews for      5 secondary processing of asylum seekers at ports of      6 entry, correct?      7 A. I believe so.      8 Q. OFO has used virtual interviews to increase      9 the throughput of ports of entry with respect to      10 asylum seekers, correct?      11 A. Correct. Terms of the processing.      12 Q. Virtual interviews are one way that OFO can      13 increase the throughput of a port of entry with      14 respect to asylum seekers, correct?      15 A. Incorrect. Virtual interviews are one way      16 to increase the processing, but not the throughput.      17 Q. Okay. So, but if I wanted to increase the      18 processing capacity of a port of entry, virtual      19 interviews are one tool that is available to me,      20 correct?      21 A. The processing capability only.      22 Q. Correct. So if I wanted to process more</p>

<p style="text-align: right;">Page 114</p> <p>1   asylum seekers, if that was my goal, virtual 2   interviews are a tool that is available to me?</p> <p>3       A. Without the accompanying detention space to 4   hold them, or the ability to turn them over to ERO, we 5   would not increase the processing with any tool. You 6   can't just process somebody. You have to have 7   someplace to put them when the processing is done.</p> <p>8       Q. My question more simple. Virtual 9   interviews are a way of increasing the processing 10   capacity of a port of entry; is that right?</p> <p>11      A. You said increased throughput.</p> <p>12      Q. I was talking about processing though, just 13   processing?</p> <p>14      A. Virtual interviews can assist with the 15   processing.</p> <p>16      Q. They can increase the processing 17   capabilities of a port of entry; is that right?</p> <p>18      A. By diverting resources from other 19   activities.</p> <p>20      Q. Certainly. But you could have somebody in 21   Detroit or Miami conduct a virtual interview at San 22   Ysidro using the virtual interview technology that's</p>	<p style="text-align: right;">Page 116</p> <p>1   Sector Border Patrol to utilize the Imperial Beach 2   station to hold and process single adult males 3   awaiting credible fear.</p> <p>4       Did I read that correctly?</p> <p>5      A. Yes.</p> <p>6      Q. Please take a moment to read Mr. Armijo's 7   e-mail. Does Mr. Armijo anywhere in his e-mail 8   request that the San Ysidro Port of Entry begin 9   metering?</p> <p>10     A. As I read this, I would reach the 11   conclusion that they need to meter.</p> <p>12     Q. Okay.</p> <p>13     A. He does not come out and ask for 14   permission. He does not need to ask for permission. 15   The port leadership has the flexibility to implement 16   metering as they need to. And looking at this, he's 17   referencing infra structure complaints. He's 18   referencing a large influx of Haitians. He's 19   referencing the inability for ERO and such to pick up 20   folks.</p> <p>21     So as I read this, again leadership at the 22   ports does not need to ask for permission to begin</p>
<p style="text-align: right;">Page 115</p> <p>1   available to OFO?</p> <p>2       A. If you are willing to accept the impact to 3   Detroit and Miami, you could use those officers to 4   help process the migrants through virtual processing.</p> <p>5       Q. Okay. The next remedy that is listed in 6   Mr. Armijo's e-mail is, quote, converted GSA's 7   recently vacated maintenance working area at the Old 8   Port into a temporary holding room.</p> <p>9       Did I read that correctly?</p> <p>10      A. Yes.</p> <p>11      Q. And this is simply taking available space 12   and using it as a temporary holding area; is that 13   right?</p> <p>14      A. I can't speak to that. I'm not familiar 15   with what that space was or how they intended to use 16   it.</p> <p>17      Q. All right. But you did receive this 18   e-mail; is that right?</p> <p>19      A. Yes.</p> <p>20      Q. Okay. And then the next, below those four 21   listed items Mr. Armijo's e-mail he writes, quote, 22   Port management is currently working with San Diego</p>	<p style="text-align: right;">Page 117</p> <p>1   metering.</p> <p>2       Q. So that's not my question. My questions 3   was does Mr. Armijo, anywhere in his e-mail, reference 4   metering?</p> <p>5      A. He does not.</p> <p>6       Q. And regardless of whether one could imply 7   that metering should occur, he doesn't say it, right?</p> <p>8       A. He does not use the term metering in his 9   e-mail.</p> <p>10      Q. He doesn't use the term queue management 11   either?</p> <p>12      A. He does not.</p> <p>13      Q. He doesn't talk about putting officers at 14   the limit line, does he?</p> <p>15      A. No.</p> <p>16      Q. So and Mr. Armijo lists several remedies 17   that are being taken, right?</p> <p>18      A. Yes. Temporary.</p> <p>19       Q. And he said temporary remedy that might be 20   available to a port director at this time would be 21   metering, correct?</p> <p>22      A. Yes.</p>

<p style="text-align: right;">Page 118</p> <p>1 Q. And he doesn't list metering as one of 2 those remedies that's being undertaken, correct? 3 A. He may already be doing metering. 4 Q. Me doesn't list it here, does he? 5 A. He hasn't. 6 Q. So you are just assuming that he might have 7 been metering? 8 A. I'm assuming based on the conditions that 9 he clearly outlines here, that they have already been 10 metering to control the influx because they have 11 infrastructure constraints. They have no one being 12 picked up from ERO. 13 Q. But you are reading that into his e-mail, 14 correct? 15 A. Yes. 16 Q. You are assuming that's correct, right? 17 A. I believe it to be correct. 18 Q. That's a guess, right? That's a guess as 19 you sit here today? 20 A. As I read this, that would bring me to that 21 conclusion. 22 Q. I'm not asking whether it led you to that</p>	<p style="text-align: right;">Page 120</p> <p>1 director for operations of OFO? 2 A. At that time he was. Yes. 3 Q. So he would have been Mr. Armijo's boss, 4 correct? 5 A. No. Mr. Armijo would report the director 6 of field operations. 7 Q. Okay. 8 A. And the director would report to 9 Mr. Martel. 10 Q. And who's Margaret Braunstein? 11 A. That was the deputy executive director for 12 operations at the time. 13 Q. Okay. And would he have been a direct 14 report to Margaret Braunstein? 15 A. No. 16 Q. There are -- is there's also -- is there 17 anybody on this e-mail who would have been Mr. 18 Armijo's direct supervisor? 19 A. Pete Flores. 20 Q. Anyone else? 21 A. No. Mr. Armijo reports to Pete Flores. 22 Q. So Mr. Armijo did cc Pete Flores on this</p>
<p style="text-align: right;">Page 119</p> <p>1 conclusion. There's nothing in this e-mail that says 2 that the port is metering, correct? 3 A. They are receiving inquiries from the media 4 about the queuing area, the asylum line. To me that 5 indicates they are metering, that they are holding. 6 Q. Where does he say they are holding? 7 A. It says the inquiries are most likely 8 attributed to our usage of designated queuing areas, 9 asylum line. 10 Q. Where does he say holding? 11 A. He doesn't say holding. 12 Q. Where does he say that individuals are 13 being told that the port is at capacity and to come 14 back at a later date? 15 MS. SHINNERS: Objection. 16 A. That's not listed in this e-mail. 17 Q. Okay. And Mr. Armijo is sending this 18 bottom e-mail to Carlos Martel? 19 A. Yes. 20 Q. And Margaret Braunstein, correct? 21 A. Correct. 22 Q. And Carlos Martel is the acting executive</p>	<p style="text-align: right;">Page 121</p> <p>1 e-mail, correct? 2 A. Yes. 3 Q. And then Carlos Martel forwards this e-mail 4 correspondence from Mr. Armijo to you -- 5 A. Yes. 6 Q. -- John Wagner, and Todd Hoffman, correct? 7 A. Correct. 8 Q. With a copy to Margaret Braunstein? 9 A. Yes. 10 Q. What was John Wagner's position at this 11 time in May 2016? 12 A. He's the deputy executive assistant 13 commissioner for field operations. 14 Q. And was Mr. Hoffman's position the same as 15 what we talked about earlier? 16 A. Yes, it was. 17 Q. Okay. And Carlos Martel writes, quote, 18 Gentlemen, FYSA, significant increase in CF cases at 19 SYS/Otay, POEs resulting in saturation of detention 20 space. Mitigation actions are enumerated below to 21 include virtual processing assistance from Detroit and 22 MIA. Media coverage is expected.</p>

<p style="text-align: right;">Page 122</p> <p>1        Did I read that correctly?</p> <p>2        A. Yes.</p> <p>3        Q. And FYSA means For Your Situational Awareness?</p> <p>4        A. Yes.</p> <p>5        Q. CF refers to Credible Fear?</p> <p>6        A. Yes.</p> <p>7        Q. And MIA is Miami?</p> <p>8        A. Right.</p> <p>9        Q. Okay. I'm sorry. Decoding stuff here.</p> <p>10      SYS is San Ysidro?</p> <p>11      A. San Ysidro.</p> <p>12      Q. Okay. And nowhere in Mr. Martel's e-mail does he say that one of the mitigation actions is being undertaken is metering, correct?</p> <p>13      A. He does not mention metering.</p> <p>14      Q. Okay. You then respond and say, "Kirby, PLS advise the status of the cap waiver request for San Diego. Need to know by 11:00 a.m. Thursday. In speaking with Pete Flores, we need to get this approved immediately. PLS advise."</p> <p>15      Did I read that correctly?</p>	<p style="text-align: right;">Page 124</p> <p>1        sir?</p> <p>2        A. Ends with what again?</p> <p>3        Q. The page number 48.</p> <p>4        A. Yes. 46.</p> <p>5        Q. To 48. There is a September 13, 2016 e-mail chain, September 12 through September 13, 2016 e-mail chain with the subject line: Haitians arriving Tijuana. Do you see that, sir?</p> <p>6        A. Yes.</p> <p>7        Q. All right. You received some of the e-mails in this chain, but you did not receive the top e-mail in this chain; is that correct?</p> <p>8        A. The top e-mail.</p> <p>9        Q. The top e-mail from John Wagner to Maureen Dugan?</p> <p>10      A. Maureen Dugan. There's doesn't seem to be anything in there.</p> <p>11      Q. Correct. But you didn't receive that?</p> <p>12      A. No, I did not receive that.</p> <p>13      Q. Okay. You received every other e-mail in the chain; is that right?</p> <p>14      A. Yes.</p>
<p style="text-align: right;">Page 123</p> <p>1        A. Yes.</p> <p>2        Q. You are referring to the -- gain a waiver on the cap overtime?</p> <p>3        A. The overtime cap waiver. Yes.</p> <p>4        Q. And in your e-mail that was sent on May 25, 2016 at 10:19 p.m., do you suggest that the port begin metering?</p> <p>5        A. No.</p> <p>6        Q. Did Carlos Martel in his e-mail suggest the port begin metering?</p> <p>7        A. No.</p> <p>8        Q. Okay.</p> <p>9        - - -</p> <p>10      (A document was marked as Deposition Exhibit Number 27.)</p> <p>11      - - -</p> <p>12      BY MR. MEDLOCK:</p> <p>13      Q. All right, sir. I've put in front of you what we've marked as Exhibit 27 to your deposition.</p> <p>14      It's a multi-page e-mail chain that begins with AOL-DEF-00762746 and ends with the Bates Number 48.</p> <p>15      Did I read that correct? Do you see that,</p>	<p style="text-align: right;">Page 125</p> <p>1        Q. Okay. And for those e-mails, you received them as part of your job at CBP, correct?</p> <p>2        A. Yes.</p> <p>3        Q. You would have received them on or about the dates and times listed in those e-mails, correct?</p> <p>4        A. Correct.</p> <p>5        Q. You would have read and understood those e-mails at the time you received them, correct?</p> <p>6        A. Yes.</p> <p>7        Q. And you have no reason to believe as you are sitting here today that this -- these e-mails, other than the redactions that appear on them, are inaccurate or incomplete in any way, correct?</p> <p>8        A. No.</p> <p>9        Q. Okay. I want to focus on the e-mail from Carlos L. Gonzalez on Tuesday, September 13, 2016 at 8:54 a.m.?</p> <p>10      A. Yes.</p> <p>11      Q. And at the time Mr. Gonzalez sent this e-mail, he was the attache for CBP at the U.S. Embassy in Mexico City; is that right?</p> <p>12      A. He was.</p>

<p style="text-align: right;">Page 126</p> <p>1       Q. And Mr. Gonzalez writes in this e-mail, 2 quote, Commissioner Vargas is now advising that he is 3 under immense pressure from the Governor of Baja 4 California and Mayor of Tijuana for assisting us in 5 processing the migrants in Tijuana while they wait for 6 appointments. They blame him for the migrants hanging 7 out in their city longer than they should, thus 8 causing a local humanitarian crisis. 9              Did I read that correctly?</p> <p>10      A. Yes.</p> <p>11      Q. So Carlos Gonzalez reported that Mexican 12 officials believed there was a local humanitarian 13 crisis in Tijuana as of September 2016, correct?</p> <p>14      A. From this it appears as though the mayor 15 believed that it was a humanitarian crisis. Yes.</p> <p>16      Q. And that e-mail was sent to you correct?</p> <p>17      A. Yes, it was.</p> <p>18      Q. And so in September 2016 you knew that some 19 Mexican officials believed that there was a local 20 humanitarian crisis going on in Tijuana, correct?</p> <p>21      A. I received this e-mail in 2016, so, yes, I 22 would have read that.</p>	<p style="text-align: right;">Page 128</p> <p>1       A. I believe at the time we started to use 2 metering, Grupo Beta handed out appointment tickets. 3 I don't recall CBP doing that.</p> <p>4       Q. Okay.</p> <p>5       A. But again, this was in 2016 when we started 6 this process. Best of my recollection, it was Grupo 7 Beta that was trying to control the flow through 8 appointment tickets. I don't believe we gave out any 9 tickets.</p> <p>10      Q. Okay. Thank you for clarifying.</p> <p>11      A. To the best of my recollection.</p> <p>12      Q. So the phrase wait for appointments here is 13 in reference to the metering policy, correct?</p> <p>14      A. Waiting for available space to process.</p> <p>15      Yes.</p> <p>16      Q. So what Mr. Gonzalez is reporting in his 17 e-mail is that Mexican officials believe that due to 18 the metering policy, there is a humanitarian crisis 19 going on in Tijuana, correct?</p> <p>20      A. The Mexican mayor, Mayor of Tijuana 21 believes. Yes.</p> <p>22      Q. And the governor of Baja, California,</p>
<p style="text-align: right;">Page 127</p> <p>1       Q. So earlier we talked about whether there 2 was a humanitarian crisis going on in Tijuana. Does 3 this refresh your recollection that Mexican officials 4 believed there was a humanitarian crisis going on in 5 that city?</p> <p>6       A. Based on this e-mail, the mayor of Tijuana 7 was concerned about the level of migrants in his city. 8 Yes. And felt it was a humanitarian crisis.</p> <p>9       Q. And this would have been during the time 10 period during which the San Ysidro Port of Entry was 11 engaged in metering, correct?</p> <p>12      A. Correct.</p> <p>13      Q. And there's a reference to waiting for 14 appointments in this e-mail, correct?</p> <p>15      A. Correct.</p> <p>16      Q. And for a time when the metering policy was 17 first issued, individuals without proper travel 18 documents who approached a port of entry were given 19 physical appointments, correct?</p> <p>20      MS. SHINNERS: Objection. Vague as to 21 geographic scope.</p> <p>22      Q. Do you understand my questions?</p>	<p style="text-align: right;">Page 129</p> <p>1       correct?</p> <p>2       A. Apparently, yes.</p> <p>3       Q. And do you believe that the Mayor of 4 Tijuana was lying when he called it a humanitarian 5 crisis?</p> <p>6       A. It's his view that it was a humanitarian 7 crisis.</p> <p>8       Q. Do you believe that his view is inaccurate?</p> <p>9       A. I'm not in Tijuana. I can't speak to that.</p> <p>10      Q. Do you have any way -- do you have any 11 reason as you sit here today to dispute the 12 characterization of what was going on Tijuana in 13 September 2016 as a humanitarian crisis?</p> <p>14      A. I couldn't speculate as to the conditions 15 in Tijuana at that time.</p> <p>16      Q. So as you sit here today, you don't have 17 any evidence that there was not a humanitarian crisis 18 going on in September 2016 in Tijuana due to the 19 metering policy; is that right?</p> <p>20      A. I would have to understand better what they 21 mean by humanitarian crisis. It was clear that they 22 had large numbers of Haitians awaiting in Tijuana for</p>

<p style="text-align: right;">Page 130</p> <p>1 entry into the United States. Now if they view that      2 as a humanitarian crisis, that's their view. Again,      3 I'm not the local politician. I don't understand      4 what's the basis for his view that it's a humanitarian      5 crisis.</p> <p>6 Q. But you certainly knew by September of      7 2016, when you received this e-mail, that some Mexican      8 officials viewed the metering policy as having caused      9 a humanitarian crisis; is that right?</p> <p>10 A. Based on this e-mail the local officials      11 feel it was a humanitarian crisis.</p> <p>12 Q. So the answer to my question is yes, you      13 knew in September 2016 that Mexican officials believed      14 that metering had caused a humanitarian crisis in      15 Tijuana; is that right?</p> <p>16 A. I believe that the presence of a large      17 number of migrants in Tijuana was creating      18 humanitarian crisis. Now whether all of those were      19 attributed to the metering process, I don't know.</p> <p>20 Q. So, sir, when you were -- no one told you      21 to avoid answering my questions today, did they?</p> <p>22 A. No.</p>	<p style="text-align: right;">Page 132</p> <p>1 Q. And you knew that they were making that      2 claim in September 2016?</p> <p>3 A. By refreshing my recollection of this      4 e-mail, I am on the e-mail's distribution.</p> <p>5 Q. Okay. So you would have known that in      6 September of 2016, right?</p> <p>7 A. I would have received this e-mail and known      8 that in September of 2016.</p> <p>9 Q. Okay. Thank you, sir. All right. Let's      10 move on to our next exhibit.</p> <p>11 - - -</p> <p>12 (A document was marked as Deposition      13 Exhibit Number 28.)</p> <p>14 - - -</p> <p>15 BY MR. MEDLOCK:</p> <p>16 Q. All right, sir. I've marked as Exhibit 28      17 a three-page e-mail that begins with the Bates number      18 AOL-DEF-00762523, ends with the Bates number trailing      19 in 525. Sir, Exhibit 28 is an e-mail chain from      20 September 16, 2016, that was exchanged between Todd      21 Hoffman, Pete Flores, Sidney Aki, Johnny Armijo and      22 others, correct?</p>
<p style="text-align: right;">Page 131</p> <p>1 Q. No one told you to come here and      2 filibuster, did they?</p> <p>3 A. No.</p> <p>4 Q. So you are capable of giving a yes or no      5 answer to a question, right?</p> <p>6 A. Not to something that I have to speculate      7 on.</p> <p>8 Q. So I don't think this requires speculation,      9 sir.</p> <p>10 A. The mayor from Tijuana --</p> <p>11 Q. Can I -- can I just --</p> <p>12 A. Yes, sir.</p> <p>13 Q. -- ask you the question though, before you      14 go into the answer.</p> <p>15 My question is, yes or no, you knew in      16 September 2016 that the Mayor of Tijuana and the      17 Governor of Baja, California, were claiming that there      18 was a local humanitarian crisis in Tijuana that had      19 been caused by the metering policy?</p> <p>20 A. Based on this e-mail that I received in      21 2016, it does indicate the Mayor thought it was a      22 local humanitarian crisis, as did the Governor.</p>	<p style="text-align: right;">Page 133</p> <p>1 A. Yes.</p> <p>2 Q. And you were aware in 2016 that senior      3 government officials were interested in what was      4 occurring at the San Ysidro Port of Entry with respect      5 to the Haitians; is that correct?</p> <p>6 A. Yes. I remember Secretary Johnson was      7 interested in what was taking place in San Diego.</p> <p>8 Q. When you say Secretary Johnson, you mean J.      9 Johnson, who was at the time --</p> <p>10 A. DHS?</p> <p>11 Q. -- DHS secretary?</p> <p>12 A. Yes, sir.</p> <p>13 Q. And in fact the National Security Council      14 was getting updates on what was going on at San Ysidro      15 at that time?</p> <p>16 A. Apparently, yes.</p> <p>17 Q. And the deputy's committee actually held a      18 meeting about what was going on in San Ysidro,      19 correct?</p> <p>20 A. According to this e-mail.</p> <p>21 MS. SHINNERS: Can we take a quick break      22 just to look at this document and discuss among</p>

<p style="text-align: right;">Page 134</p> <p>1    counsel? We just want to make sure there's no      2    redactions that need to be made. I'm not saying there      3    will be, just potentially if there's potential claw      4    back, we want to just take a look.</p> <p>5            MR. MEDLOCK: Okay. Sure. We can do that.      6            - - -      7            (Recessed at 11:45 a.m.)      8            (Reconvened at 11:47 a.m.)      9            - - -</p> <p>10          BY MR. MEDLOCK:</p> <p>11          Q. Sir, did you ever attend any of these      12         deputy's committee meetings or National Security      13         Council meetings regarding what was going on in San      14         Ysidro in 2016?</p> <p>15          A. No. Not that I recall. No.</p> <p>16          Q. Did you ever get a readout of those      17         meetings?</p> <p>18          A. I'm sure the deputy, when he came back,      19         probably would have discussed what occurred at those      20         meetings. That's generally the way these things go.</p> <p>21          Q. Do you have any recollection of your      22         interactions with the deputy regarding those meetings?</p>	<p style="text-align: right;">Page 136</p> <p>1            Q. And this is an e-mail -- a chain of e-mails      2         between Katherine Stark, Johnny Armijo, Pete Flores      3         and others, correct?</p> <p>4          A. Correct.</p> <p>5          Q. And the subject line of the e-mail is      6         Asylum Claims at San Ysidro/Ped West, correct?</p> <p>7          A. Correct.</p> <p>8          Q. Ped West is a portion of the San Ysidro      9         Port of Entry, correct?</p> <p>10         A. Pedestrian West. Yes.</p> <p>11         Q. And there's also a pedestrian east as well,      12         correct?</p> <p>13         A. Yes.</p> <p>14         Q. We talked a little bit earlier about a      15         Grupo Beta. What is Grupo Beta to your knowledge?</p> <p>16         A. Grupo Beta, to my knowledge, is a arm or      17         branch within Mexican immigration, Mexican INAMI.</p> <p>18         Q. What does Grupo Beta do, if you know?</p> <p>19         A. To the best of my recollection, they deal      20         with the asylum, the migrant processing, those types      21         of things. I'm not real clear on the distinction      22         between what Grupo Beta does as a part of INAMI and</p>
<p style="text-align: right;">Page 135</p> <p>1          A. No.</p> <p>2          Q. Who would the Deputy or C2 have been at      3         that time?</p> <p>4          A. At that time it would have been Kevin      5         McAleenan.</p> <p>6          Q. Do you know whether the deputy's Committee      7         of the National Security Council or the National      8         Security Council was aware that metering was going on      9         at the San Ysidro Port of Entry in September 2016?</p> <p>10         A. I don't know if they were aware.</p> <p>11            - - -</p> <p>12          (A document was marked as Deposition      13         Exhibit Number 29.)</p> <p>14            - - -</p> <p>15          BY MR. MEDLOCK:</p> <p>16          Q. Sir, I've put in front of you a multi-page      17         e-mail chain that begins with the Bates number      18         AOL-DEF-00761290 through 294. It's an e-mail chain      19         that begins in August 17, 2016, and ends on September      20         7, 2016.</p> <p>21          Do you see that, sir?</p> <p>22          A. Yes.</p>	<p style="text-align: right;">Page 137</p> <p>1         the broader units within IMANI. I don't know.</p> <p>2          Q. Nor am I. I was hoping you would. Is it      3         correct that Grupo Beta coordinates with OFO regarding      4         the implementation of the metering policy?</p> <p>5          A. During the beginning of the implementation,      6         we did coordinate with Grupo Beta. I do not know if      7         San Ysidro still does that.</p> <p>8          Q. Do ports of entry, when implementing the      9         metering policy, coordinate with individuals in Mexico      10        to meter the asylum seekers that come to the port of      11        entry?</p> <p>12         A. Could you just restate that again?</p> <p>13         Q. Sure. I guess -- I can break it down a      14         little bit for you.</p> <p>15         A. Okay. Because I think I want to make sure      16         I'm clear on the process, explain the process, because      17         there is interaction at some point.</p> <p>18         Q. Right.</p> <p>19         A. In order to say we have capacity, bring      20         up --</p> <p>21         Q. And that's what I was going to get to.</p> <p>22         A. That that occurs. Yes.</p>

<p style="text-align: right;">Page 138</p> <p>1       Q. Okay. So when a port is metering, there 2 has to be someone that they interact with on the 3 Mexican side of the border to say we have capacity for 4 5 more or 10 more or 20 more correct? 5       A. Correct, if the migrants have returned to 6 the shelters. 7       Q. Correct. 8       A. In some locations they may be waiting on 9 the bridge. And at that location, there's no reason 10 to coordinate. You would just bring in the next 10 11 that are waiting in line on the bridge, if you will. 12       Q. So there -- but there are some ports for -- 13       A. There are some -- right. But I'm saying 14 it's a different process at each port. 15       Q. Understood. 16       A. But yes, in some locations like San Ysidro, 17 generally the migrants have returned to the shelters. 18 And San Diego would coordinate with somebody to say we 19 now have capacity, bring up 10 or 20; or we have space 20 specifically for family units. Bring up family units. 21 That coordination would take place. 22       Q. Okay.</p>	<p style="text-align: right;">Page 140</p> <p>1 line may not be that long. So they may not have 2 actually returned to a shelter. They may wait a few 3 hours and then come across. 4       So in those situations we wouldn't 5 coordinate with someone because the asylum seekers 6 would be there physically across the line, if you 7 understand that. 8       Q. Understood. 9       A. Yeah. 10      Q. And are you aware that there are in some 11 cases lists of individuals that like to be processed 12 for asylum in ports of entry that are kept on the 13 Mexican side of the border? 14      A. Yes. 15      Q. And in instances where OFO is interacting 16 with someone on the Mexican side of the border to 17 bring people up to the port for processing, the wait 18 lists are used to determine who will become next, 19 correct? 20      A. Correct. 21      Q. I want to go back to the e-mail I've marked 22 in front of you. And I'm looking at the September 7,</p>
<p style="text-align: right;">Page 139</p> <p>1       A. If that answers where you were. 2       Q. I think it does. So, for example, the San 3 Ysidro Port of Entry is located next to the Mexican 4 city of Tijuana, correct? 5       A. Correct. 6       Q. And there are individuals without proper 7 travel documents who are in shelters in Tijuana due to 8 the metering policy, correct? 9       A. They are in shelters not just because of 10 the metering. There are individuals awaiting to come 11 to the U.S. in shelters. 12       Q. Okay. And under the metering policy, 13 someone at the San Ysidro Port of Entry would need to 14 contact someone in Mexico to coordinate bringing up a 15 certain number of individuals to be processed at the 16 port, correct? 17       A. Correct. 18       Q. And that also happens with Brownsville and 19 Matamoros at times, correct? 20       A. Again, depending, you know, Brownsville and 21 Matamoros, I mean, some of those are bridges with 22 folks waiting. And because there is capacity, the</p>	<p style="text-align: right;">Page 141</p> <p>1 2016 e-mail from Johnny Armijo at 1:02 p.m. 2       A. Okay. 3       Q. And he says, "Good morning, Ms. Stark. 4 Affixed below in red are responses to the questions 5 submitted." Do you see that, sir? 6       A. Yes. 7       Q. I'll represent to you there's no red on 8 this document, but it looks like there are questions 9 and then answers set out below them, correct? 10      A. Correct. 11      Q. Okay. Do you know who Katherine Stark is? 12      A. No. 13      Q. Okay. The first question is, "I believe in 14 the call, the port director said on behalf of CBP, 15 there is currently no coordination with Grupo Beta. 16 Is that accurate." 17      Do you see that, sir? 18      A. Yes. 19      Q. And then below that there is an answer that 20 begins with, "At the outset, CBP SYS did not 21 coordinate with Grupo Beta on the development of the 22 numbering system in which Grupo Beta currently</p>

<p style="text-align: right;">Page 142</p> <p>1 utilizes to meter the flow of potential asylum claims      2 into our custody. However, subsequent to the      3 development of this system, CBP SYS does routinely      4 coordinate with Grupo Beta to ensure that there is a      5 consistent, slash, metered flow."</p> <p>6 Did I read that correctly?</p> <p>7 A. Correct.</p> <p>8 Q. And does that accurately describe the      9 interactions between the San Ysidro Port of Entry and      10 Grupo Beta as it existed in September 2016?</p> <p>11 A. To my recollection in September 2016 that      12 would be accurate.</p> <p>13 Q. Okay. Sir, I've marked as Exhibit 30 a      14 two-page e-mail, begins with the Bates number      15 AOL-DEF-00761340 and continues over to 341.      16 - - -      17 (A document was marked as Deposition      18 Exhibit Number 30.)      19 - - -      20 BY MR. MEDLOCK:      21 Q. This is a August 17, 2016 e-mail chain      22 between yourself, James R. Hutton and John P. Wagner</p>	<p style="text-align: right;">Page 144</p> <p>1 time.</p> <p>2 Q. Okay. And we already discussed John      3 Wagner's position.</p> <p>4 A. Yes.</p> <p>5 Q. So I won't belabor that. Ryan Hutton      6 writes, on August 17, 2016 at 1:08 p.m., quote, Gary      7 Merson, in parentheses, Democratic Chief Council      8 Subcommittee on Immigration and Border Security,      9 Committee of the Judiciary, end parentheses, would      10 like to have a conference call with the PD at San      11 Ysidro, and the appropriate HQ SME to discuss the      12 processing of asylum claims at San Ysidro, slash, Ped      13 West.</p> <p>14 Did I read that correctly?</p> <p>15 A. Yes.</p> <p>16 Q. HQ SME refers to a headquarters subject      17 matter expert, correct?</p> <p>18 A. Right. Correct.</p> <p>19 Q. And Mr. Hutton goes on to state, quote,      20 This relates to a call you, XD Hoffman and PD Aki      21 recently had with DHS on this very issue in which NGOs      22 were claiming that POE was turning away people</p>
<p style="text-align: right;">Page 143</p> <p>1 and Todd Hoffman, correct?</p> <p>2 A. Correct.</p> <p>3 Q. And just so we get this correct, the e-mail      4 chain starts on august 17, 2016, with a e-mail sent at      5 12:46 p.m. by Katherine Stark, correct?</p> <p>6 A. Correct.</p> <p>7 Q. And it appears she goes by the name Kylie      8 Stark in her e-mail signature, correct?</p> <p>9 A. Okay. Yes. Now, seeing that she's in the      10 Office of Congressional Affairs, I do know a Kylie in      11 Congressional Affairs.</p> <p>12 Q. Okay. So that refreshes your recollection      13 of who Katherine Stark --</p> <p>14 A. I do know who Katherine Stark was. Okay.</p> <p>15 Q. And do you know who James R. Hutton or J.      16 Ryan Hutton is?</p> <p>17 A. Yes. Goes by Ryan Hutton. Yes.</p> <p>18 Q. And what was -- his position was deputy      19 executive director, admissibility?</p> <p>20 A. Yes.</p> <p>21 Q. And Passenger Programs at the time?</p> <p>22 A. He was the deputy of Todd Hoffman at this</p>	<p style="text-align: right;">Page 145</p> <p>1 claiming the CF, when in fact Government of Mexico is      2 assisting with metering pedestrians due to current      3 construction. Did I read that correctly?</p> <p>4 A. Yes.</p> <p>5 Q. So in August 2016 counsel for the      6 Subcommittee on Immigration and Border Security      7 reached out with questions regarding allegations that      8 individuals were being turned away at the San Ysidro      9 Port of Entry, correct?</p> <p>10 A. With the allegations. Yes.</p> <p>11 Q. And those allegations related to      12 implementation of the metering policy, correct?</p> <p>13 A. I don't know. It just says alleging that      14 CBP officers are turning Mexicans away from the port.</p> <p>15 Q. Correct. And then later in the e-mail it      16 refers to assisting with metering pedestrians,      17 correct?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. So is it your understanding that      20 this inquiry related to the implementation of the      21 metering policy at San Ysidro?</p> <p>22 A. I have no reason not to think so.</p>

<p style="text-align: right;">Page 146</p> <p>1 Q. Okay. Do you recall at all what the 2 outcome of this inquiry from the subcommittee on 3 immigration and border security on he -- of the 4 committee on the judiciary was?</p> <p>5 A. No, I do not.</p> <p>6 Q. But you did know in August 2016 that 7 counsel for a congressional subcommittee had questions 8 about how the metering was being implemented at the 9 San Ysidro Port of Entry, correct?</p> <p>10 A. Yes. 11 - - - 12 (A document was marked as Deposition 13 Exhibit Number 31.) 14 - - - 15 BY MR. MEDLOCK: 16 Q. All right. Exhibit 31 is a one-page e-mail 17 from November 10 to 11, 2016, With a Bates number 18 AOL-DEF-00272936. Do you see that, sir? 19 A. Yes. 20 Q. And this is an e-mail exchange between 21 yourself, Kevin McAleenan, John Wagner, Gloria Chavez 22 and others, correct?</p>	<p style="text-align: right;">Page 148</p> <p>1 A. I don't recall when. 2 Q. Okay, and there's also a reference in here 3 to Beverly Good? 4 A. Beverly Good. 5 Q. Who's Beverly Good at this time? 6 A. At this time, I believe this was in the 7 latter part of '16. I believe at this time Beverly 8 Good would have been the acting executive director for 9 operations. 10 Q. Okay. All right. So I'm starting down at 11 the e-mail from Gloria Chavez to Beverly Good at the 12 bottom of the e-mail chain. Do you see that? 13 A. Yes. 14 Q. Okay. That e-mail was sent November 10, 15 2016 at 2:48 p.m., correct? 16 A. Yes. 17 Q. All right. And it begins, quote, One other 18 top that C2 discussed at the NAC meeting today was the 19 ability to meter the flow of FMUAs at the POE bridges, 20 in open parentheses, at the middle the bridge, closed 21 parentheses, at some of our Texas POEs to prevent the 22 overflow at the actual POEs.</p>
<p style="text-align: right;">Page 147</p> <p>1 A. Correct. 2 Q. Do you see an individual in this e-mail 3 referred to as Patrick Flanagan? 4 A. Yes. 5 Q. What's Patrick Flanagan's position? 6 A. Where -- is that in the body of the e-mail? 7 Q. It's not. That's why I'm asking. 8 A. Oh, I see the cc there. He was the chief 9 of staff to the deputy commissioner in 2016. 10 Q. Okay. And Enrique Tamayo, what was his or 11 her position at the time? 12 A. I believe at this time he was also assigned 13 to the Crisis Action Team, which was the precursor to 14 the MCAT. 15 Q. Okay. So it started out as Crisis Action 16 team and became MCAT? 17 A. Border patrol had a stats unit, field op 18 had a stats unit. They brought the two together to 19 try to have some greater visibility and reconcile the 20 numbers because we were reporting things differently. 21 the CAT then became the MCAT at some point. 22 Q. But you don't recall when?</p>	<p style="text-align: right;">Page 149</p> <p>1 Did I read that correctly? 2 A. Yes. 3 Q. What does FMUAs mean? 4 A. Family units. 5 Q. What is the NAC meeting? 6 A. The NAC was the location of DHS 7 headquarters. 8 Q. And do you recall whether this is referring 9 to an ad hoc meeting or a standing meeting? 10 A. I don't know. 11 Q. Okay. Did you attend this meeting, do you 12 recall? 13 A. No. I don't recall. 14 Q. Okay. Then Ms. Chavez goes on to state in 15 the e-mail, further down in the same paragraph, I'm 16 sorry, actually the next paragraph, quote, I just 17 received word from Commissioner staff that this 18 proposal that C2 introduced to S1 for consideration 19 earlier today was approved by S1 and to make 20 notification to OFO. 21 Did I read that correctly? 22 A. Yes.</p>

<p style="text-align: right;">Page 150</p> <p>1       Q. So if I could decode some jargon here, the 2       deputy commissioner made a proposal to the secretary 3       to begin metering flow of family units at ports of 4       entry in Texas, and that was approved by the 5       secretary; is that correct?</p> <p>6       A. I'm not sure if this was to begin the 7       metering or the placement of the officers at the limit 8       line.</p> <p>9       Q. Okay. But a proposal was made by the 10      deputy secretary that was approved -- by the deputy 11      commissioner that was approved by the deputy 12      secretary?</p> <p>13      A. Correct. Correct.</p> <p>14      Q. And at this time, November 2016, the 15      secretary would have been J. Johnson?</p> <p>16      A. I believe so. Yes. Yes. Because I -- 17      yes, because Mr. Johnson stayed until the change of 18      the administration in January of '17. He didn't leave 19      early, as far as I recall, so...</p> <p>20      Q. Okay. And Ms. Chavez goes on to say that 21      OFO field leadership should be told that some of the 22      Texas POEs can start engaging in this new operational</p>	<p style="text-align: right;">Page 152</p> <p>1       bathrooms.</p> <p>2       Q. I see?</p> <p>3       A. As the situations deteriorated and we had 4       unsafe conditions, then we started to hold at the 5       limit line so that the migrants could return to the 6       shelters where there was food, there was bathrooms. 7       And then we would process them from the limit line. 8           That was how the metering process 9       transitioned from where we started in 2016 holding at 10      the doors, to beginning to place officers at the limit 11      line so that they would remain in the shelters, as 12      opposed to outside the port exposed to the elements 13      without restrooms and such.</p> <p>14      Q. Can I -- thank you for that explanation. I 15      just want to unpack a couple things.</p> <p>16      So you said originally when metering was 17      first implemented, people were held at the doors to 18      the actual port building, correct?</p> <p>19      A. Correct.</p> <p>20      Q. And the port building is on U.S. soil?</p> <p>21      A. Correct.</p> <p>22      Q. It's actually set back from the boundary</p>
<p style="text-align: right;">Page 151</p> <p>1       alignment, correct?</p> <p>2       A. Correct?</p> <p>3       Q. So sometime around November 10, 2016, some 4       of the ports of entry in Texas began metering the flow 5       of family units on POE bridges, correct?</p> <p>6       A. Again, according to this, I'm not sure if 7       it was to begin the metering or the placement of the 8       officers at the limit line, because we had been 9       metering throughout 2016 at different places at 10      different times.</p> <p>11      Q. But when that metering occurred at some -- 12      it sounds like there were instances where officers 13      weren't at the limit line, correct?</p> <p>14      A. When we started the metering in 2016, we 15      did not hold at the limit line. We simply allowed 16      people to line up outside the doors to the port and 17      wait to be processed.</p> <p>18      Q. I see.</p> <p>19      A. Our processing capability was not 20      sufficient to handle the flows we had. You ended up 21      with individuals camping out outside, outside the port 22      limits without shelter, without food, without</p>	<p style="text-align: right;">Page 153</p> <p>1       line, correct?</p> <p>2       A. Correct, in most ports.</p> <p>3       Q. In most ports it's actually set back 4       several feet from the boundary line?</p> <p>5       A. Correct.</p> <p>6       Q. Can it be several yards from the boundary 7       line?</p> <p>8       A. It could be.</p> <p>9       Q. What's the furthest distance between the 10      boundary line and a port that you are aware of on the 11      southwestern border?</p> <p>12      A. Oh, I think Anzalduas from the limit line 13      to the port is about a mile, 1.2 miles.</p> <p>14      Q. How about San Ysidro, how far back is the 15      port building from the boundary line?</p> <p>16      A. I couldn't speculate. It's a huge port. 17      From where the limit line is and where pedestrians 18      come, it's a short walk to the old port building. 19      It's a long walk to primary. The POV lanes is 20      different.</p> <p>21      Q. Yeah. But from the boundary line to the 22      port building, whether it's the --</p>

<p style="text-align: right;">Page 154</p> <p>1 A. Correct.      2 Q. -- old port or the new port, it's several      3 feet, correct?      4 A. Correct.      5 Q. That's true in Otay Mesa, true, as well?      6 A. I believe so. Yes.      7 Q. That's also true in Hidalgo, correct?      8 A. Hidalgo, correct.      9 Q. And Laredo it's also true?      10 A. Correct.      11 Q. Is it true in Brownsville as well, that      12 there's several feet between the boundary line and the      13 port building?      14 A. Yes.      15 Q. How about El Paso, several feet between --      16 A. Yes.      17 Q. Okay. So when metering was first      18 implemented at those ports, individuals actually --      19 individuals who were seeking asylum actually crossed      20 the boundary line onto U.S. soil and were waiting on      21 U.S. soil, before they were metered, correct?      22 A. Right. They remained on U.S. soil until we</p>	<p style="text-align: right;">Page 156</p> <p>1 discussions throughout 2016, and then into 2017 when      2 the migrants slowed down, that allowing people to wait      3 within the U.S. space, exposed to the elements,      4 without the bathrooms, without food, was not the way      5 we were going to do this if we had to again.      6 Q. And when to the best of your knowledge was      7 that decision actually made about moving officers to      8 the limit line?      9 A. I don't recall when it was made. It may      10 have been made sometime in late 2016. Again, the      11 numbers came down significantly in 2017. And clearly      12 in 2018, we held folks at the limit lines.      13 Q. And this is just a question -- a yes or no      14 question. Was legal counsel looped in on the      15 discussion regarding moving officers to the limit      16 lines?      17 A. Not to my recollection.      18 Q. Was this limit line ever discussed during      19 your 8:15 standing meeting?      20 A. I can't recall. I have no reason to think      21 we -- that we would not have discussed it at some      22 point.</p>
<p style="text-align: right;">Page 155</p> <p>1 had the capacity to bring them into the office to      2 process them.      3 Q. All right. So they were on U.S. soil when      4 they were told to wait until they had capacity,      5 correct?      6 A. They were told to wait. We -- they stayed      7 where they were on U.S. soil. They were not returned      8 to Mexico.      9 Q. Correct. I guess I want to make sure I      10 understand exactly the -- how this worked. And then      11 at some point there was a decision made to move      12 officers to the limit line, correct?      13 A. Correct.      14 Q. And the limit line refers to the boundary      15 line between the actual physical boundary between the      16 U.S. and Mexico, correct?      17 A. Yes.      18 Q. Who made the decision, to your knowledge,      19 to move the officers to the limit line?      20 A. I don't think it was a single decision. I      21 think it was in discussions based on the operational      22 situations at each locations. But we did have</p>	<p style="text-align: right;">Page 157</p> <p>1 Q. How about the standing meeting in the SCIF      2 with the commissioner and deputy commissioner?      3 A. No.      4 Q. It wouldn't have been discussed?      5 A. Those meetings are intelligence driven, not      6 operationally.      7 Q. So do you recall when ports of entry in      8 Texas began implementing metering in 2016?      9 A. No. I don't recall.      10 Q. It would have been sometime after San      11 Ysidro did it though?      12 A. Yes. San Ysidro started and then --      13 Q. What was the second port that was --      14 A. I don't recall as the -- I believe it would      15 have likely have been Calexico, because the Haitians      16 moved then from Tijuana to Mexicali. They then moved      17 to San Luis and then into Nogales.      18 So if I had to, to the best of my      19 recollection those were probably the next three that      20 would have started to metering, because the metering,      21 again, was a direct response to the Haitian arrivals.      22 Q. In November 2016 when this decision in this</p>

<p style="text-align: right;">Page 158</p> <p>1 e-mail was made to move officers either to the limit 2 line or start metering at Texas ports of entry -- 3 A. Yes. 4 Q. -- you would have been aware that Mexican 5 government officials had said that there was a local 6 humanitarian crisis going on in Tijuana, correct? 7 A. Based on your other mail, yes. 8 Q. And you also would have been aware at this 9 point in November of 2016 that the Subcommittee on 10 Immigration and Border Security and the commissioner 11 of the committee of the judiciary had questions about 12 the metering policy, correct? 13 A. Yes. 14 Q. And do you recall raising any concerns at 15 that time that Mexican authorities believed that there 16 was a local humanitarian crisis going on when this 17 discussion regarding the Texas ports of entry was 18 going on? 19 A. I don't recall those discussions. No. 20 Q. Do you recall anyone saying, hey, we are 21 getting congressional inquiries; should we rethink how 22 we are rolling out metering in the Texas Port of</p>	<p style="text-align: right;">Page 160</p> <p>1 A. Yes. 2 Q. And you would have received these e-mails 3 on or about the time listed in the time and date 4 listed in the e-mails, correct? 5 A. Correct. 6 Q. And you have no reason as you sit here 7 today to believe that these e-mails, other than the 8 redactions that appear in some parts of them are 9 incomplete or inaccurate, correct? 10 A. Correct. 11 Q. Okay. Do you remember -- 12 MS. SHINNERS: I'm so sorry. This seems as 13 if the redactions on this document are insufficient to 14 protect the deliberations regarding decisions that are 15 being made about policy. So I am -- 16 MR. MEDLOCK: Are you going to claw this 17 back? 18 MS. SHINNERS: I am going to claw it back. 19 MR. MEDLOCK: Okay. 20 MS. SHINNERS: If you want to go off the 21 record for a moment, perhaps we can discuss. 22 MR. MEDLOCK: Well, maybe I can just ask it</p>
<p style="text-align: right;">Page 159</p> <p>1 Entry? 2 A. No. I mean, we took the steps we needed to 3 operationally. 4 - - - 5 (A document was marked as Deposition 6 Exhibit Number 32.) 7 - - - 8 BY MR. MEDLOCK: 9 Q. Sir, we've put in front of you what we've 10 marked as Exhibit 32 to your deposition. It's a 11 two-page e-mail beginning with AOL-DEF-00259454 and 12 ending with 455. This is an e-mail exchange from 13 November 16, 2016, that involves you, John Wagner, 14 Mark Koumans and others, correct? 15 A. Correct. 16 Q. And you would have sent and received the 17 e-mails in this chain as part of your job at CBP, 18 correct? 19 A. Correct. 20 Q. And you would have read and understood the 21 e-mails in this chain at the time you received them, 22 correct?</p>	<p style="text-align: right;">Page 161</p> <p>1 without the document. 2 MS. SHINNERS: Okay. 3 BY MR. MEDLOCK: 4 Q. Do you ever recall telling anyone -- you 5 can put the document aside, sir. I don't want you to 6 look at it when answering the question. 7 Do you ever recall telling anyone that 8 maybe Mexico should start metering? 9 A. Yes. 10 Q. And you believe that Mexico should start 11 metering in order reduce the flow of migrants to the 12 U.S., correct? 13 A. Not to reduce the flow but to control the 14 flow so that we can handle it operationally. 15 Q. And you are talking about metering 16 happening on the southern border? 17 A. On the southern border. 18 Q. And you believe that Mexico should be 19 metering to control the flow of migrants, correct? 20 A. As opposed to letting them line up outside 21 the door, which is what we started with. 22 Q. You want Mexico to do its fair share to</p>

<p style="text-align: right;">Page 162</p> <p>1 control the flow of migrants, correct?</p> <p>2 A. I want Mexico to control the flow into the</p> <p>3 United States so we can handle it operationally.</p> <p>4 Q. And you believe that Mexico wasn't being --</p> <p>5 wasn't doing enough to make that happen, correct?</p> <p>6 A. At times Mexico was not doing enough to</p> <p>7 assist us in controlling the flow.</p> <p>8 Q. Was there ever a time period in which ports</p> <p>9 of entry were actually handing out appointments to</p> <p>10 individuals who were metered?</p> <p>11 A. Again I referenced the San Ysidro at the</p> <p>12 start, I believe appointment tickets were handed out.</p> <p>13 I don't again remember if it was Grupo Beta or us in</p> <p>14 the very beginning. I don't recall other ports doing</p> <p>15 that.</p> <p>16 Q. Do you recall El Paso doing that?</p> <p>17 A. I don't recall El Paso doing it.</p> <p>18 Q. All right.</p> <p>19 - - -</p> <p>20 (A document was marked as Deposition</p> <p>21 Exhibit Number 33.)</p> <p>22 - - -</p>	<p style="text-align: right;">Page 164</p> <p>1 A. Correct.</p> <p>2 Q. At 10:16 a.m., correct?</p> <p>3 A. Correct.</p> <p>4 Q. And he writes, quote, Will be on standby</p> <p>5 ready for your call. El Paso started out by giving</p> <p>6 appointments and has since course corrected and</p> <p>7 stopped with the appointments and is now just advising</p> <p>8 immigrants to come back at a later time if the POE is</p> <p>9 at detention capacity.</p> <p>10 Did I read that correctly?</p> <p>11 A. Correct.</p> <p>12 Q. Does that refresh your recollection that</p> <p>13 some ports may have been giving out appointments?</p> <p>14 A. Yes. At some point in 2016 it must have</p> <p>15 come to my attention that El Paso was using tickets,</p> <p>16 which generated my message to the DFO.</p> <p>17 Q. Was there a concern about giving out</p> <p>18 tickets?</p> <p>19 A. We don't want to be giving out tickets.</p> <p>20 Q. Why?</p> <p>21 A. Because we want to -- we are simply</p> <p>22 controlling the flow based on our operation. We are</p>
<p style="text-align: right;">Page 163</p> <p>1 BY MR. MEDLOCK:</p> <p>2 Q. All right. Exhibit 33 is a one-page e-mail</p> <p>3 that bears the Bates number AOL-DEF-00081089. It's a</p> <p>4 November 22, 2016 e-mail chain between yourself and</p> <p>5 Hector Mancha. Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. And at this time Hector Mancha was the</p> <p>8 director of field operations for the El Paso field</p> <p>9 office, correct?</p> <p>10 A. Correct.</p> <p>11 Q. The title -- the subject of the e-mail is</p> <p>12 call today, correct?</p> <p>13 A. Okay. Yes, correct.</p> <p>14 Q. And you write in the bottom e-mail, on</p> <p>15 November 22, 2016 at 7:58 a.m., quote, Hector, I need</p> <p>16 to give you a call later today re: the metering and</p> <p>17 how it is going, and if we are giving appointments</p> <p>18 out. Thanks.</p> <p>19 Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. You get into the office pretty early. And</p> <p>22 then Hector responds to your e-mail, correct?</p>	<p style="text-align: right;">Page 165</p> <p>1 not getting into a scheduling system. We didn't want</p> <p>2 to be getting in to giving out tickets anywhere.</p> <p>3 Q. Did anyone tell you that there was a legal</p> <p>4 risk to giving out tickets?</p> <p>5 MS. SHINNERS: Objection. That calls for</p> <p>6 attorney-client communications.</p> <p>7 MR. MEDLOCK: That's just a yes or no.</p> <p>8 MS. SHINNERS: But it asks a question about</p> <p>9 legal risk, so it's not actually yes or no.</p> <p>10 Q. Okay. To the extent you can answer that</p> <p>11 without giving communications to attorneys, go ahead.</p> <p>12 Can you tell me whether you believe there's</p> <p>13 a legal risk to giving out tickets?</p> <p>14 A. Do I personally believe there's a legal</p> <p>15 risk?</p> <p>16 Q. Yeah.</p> <p>17 A. I don't. I'm not a lawyer. I don't --</p> <p>18 Q. Did you believe that giving out tickets to</p> <p>19 immigrants could cause them to rely on a promise that</p> <p>20 they would be called back to the port to be processed?</p> <p>21 A. No. I recall that in the early discussions</p> <p>22 we were very concerned that giving out tickets would</p>

<p style="text-align: right;">Page 166</p> <p>1 just lead to a lot of fake tickets and a lot of misuse      2 of a system that we weren't prepared to handle with      3 the influx of migrants. So I think my operational      4 concern on giving out tickets was more of a, you know,      5 how are we going to control this. How do we know the      6 ticket we give them is legitimate.</p> <p>7 You know, we just continue with the process      8 that we were adopting with the folks holding the      9 folks. So my concerns were more operational, not      10 legal.</p> <p>11 Q. And course corrected is in this e-mail from      12 Hector Mancha, is it, the statement that the -- is      13 essentially him saying that they fixed the problem,      14 correct?</p> <p>15 A. That they stopped. Yes.</p> <p>16 Q. And Mr. Mancha goes on to write, quote,      17 Metering is definitely working. Overall numbers for      18 POEs are significantly down since initiating metering,      19 while in comparison the BP numbers for between the      20 ports are showing an upward trend.</p> <p>21 Did I read that correctly?</p> <p>22 A. Yes.</p>	<p style="text-align: right;">Page 168</p> <p>1 MS. SHINNERS: That sounds fine, as long as      2 -- yes, as long as everyone is not using the document      3 in the meantime.</p> <p>4 MR. MEDLOCK: No. I'll put it right here.</p> <p>5 MS. SHINNERS: Great. Thank you.</p> <p>6 MR. MEDLOCK: All right.</p> <p>7 - - -</p> <p>8 (Recessed for lunch at 12:22 p.m.)</p> <p>9 (Reconvened at 1:06 p.m.)</p> <p>10 - - -</p> <p>11 BY MR. MEDLOCK:</p> <p>12 Q. So we are back on the record. Thank you      13 for -- welcome back, sir. I think your counsel had a      14 few notes regarding documents that have been either      15 clawed back and redacted on the fly, or will be clawed      16 back in their entirety at this time.</p> <p>17 MS. SHINNERS: Thank you, Counsel. So,      18 yes, defendants are clawing back what had been marked      19 as Exhibit 32. It's Bates stamped AOL-DEF-00259454      20 through 259455. We are clawing back the basis being      21 that there are additional redactions needed to protect      22 information protected by the deliberative process</p>
<p style="text-align: right;">Page 167</p> <p>1 Q. BP refers to border patrol, correct?</p> <p>2 A. Correct.</p> <p>3 Q. Okay. Put that aside.</p> <p>4 - - -</p> <p>5 (A document was marked as Deposition      6 Exhibit Number 34.)</p> <p>7 - - -</p> <p>8 BY MR. MEDLOCK:</p> <p>9 Q. All right, sir. I show you what we've      10 marked as Exhibit --</p> <p>11 MS. SHINNERS: Yeah. I'm sorry. This has      12 -- definitely contains attorney reference to legal      13 advice, attorney-client communications. We are going      14 to have to claw it back again. We can discuss a      15 solution. We may be able to redact it on the fly      16 here.</p> <p>17 MR. MEDLOCK: Okay. I'm going to ask      18 about this document. So we need to redact it on the      19 fly. Here's what I would suggest. It is about 12:30.      20 Let's break for lunch, you guys can redact and let me      21 know what you are going to take out, and then I can      22 ask about the other parts.</p>	<p style="text-align: right;">Page 169</p> <p>1 privilege.</p> <p>2 Second, with respect to the document that      3 has been marked as Exhibit 34, we have -- it is Bates      4 labeled AOL-DEF-00032389. Defendants have clawed back      5 the unredacted version to assert attorney-client and      6 deliberative process privileges over a portion of that      7 document. For purposes of today's deposition, we have      8 redacted the version that is being used as the exhibit      9 to this deposition.</p> <p>10 MR. MEDLOCK: Okay. And just so I'm clear,      11 I think you handed Exhibit 32 back to the witness, and      12 you probably want to still have a copy of that.</p> <p>13 MS. SHINNERS: It was actually exhibit --      14 yes. I'm so sorry. That's what I did. Thank you.</p> <p>15 MR. MEDLOCK: Okay. No problem. Just want      16 to make sure we are all on the same page here.</p> <p>17 MS. SHINNERS: Excellent. Thanks for that      18 catch.</p> <p>19 BY MR. MEDLOCK:</p> <p>20 Q. All right, sir. You have Exhibit 34 in      21 front of you. It's a one-page e-mail with the Bates      22 number AOL-DEF-00032389; correct, sir?</p>

<p style="text-align: right;">Page 170</p> <p>1 A. Yes.</p> <p>2 Q. And that's a November 22, 2016 e-mail</p> <p>3 exchange between yourself, Beverly Good, Enrique</p> <p>4 Tamayo, Todd Hoffman, John Wagner; is that correct?</p> <p>5 A. Correct.</p> <p>6 Q. And I'm going to focus just for a second on</p> <p>7 the bottom e-mail that you sent. And I just want to</p> <p>8 get the gist of it. I'm not going to get into</p> <p>9 anything that's been redacted. But the gist of your</p> <p>10 e-mail is that you have some questions about whether</p> <p>11 CBP is giving out appointments at ports of entry,</p> <p>12 correct?</p> <p>13 A. Correct.</p> <p>14 Q. And that's in relation to the</p> <p>15 implementation of the metering policy, correct?</p> <p>16 A. Correct.</p> <p>17 Q. Okay. Let's move up to the top e-mail from</p> <p>18 Beverly Good. She responds to your e-mail, November</p> <p>19 22, 2016, at 11:41 a.m., correct?</p> <p>20 A. Correct.</p> <p>21 Q. And she gives you answers with respect to</p> <p>22 the El Paso, Laredo, Tucson and San Diego field</p>	<p style="text-align: right;">Page 172</p> <p>1 parens, and stopped with the appointments and is now</p> <p>2 just advising immigrants to come back at a later time</p> <p>3 if the POE is at detention capacity.</p> <p>4 Did I read that correctly?</p> <p>5 A. Correct.</p> <p>6 Q. And that's very similar to the e-mail</p> <p>7 exchange that you had with Hector Mancha that we</p> <p>8 looked at earlier?</p> <p>9 A. Correct.</p> <p>10 Q. Okay. And then the next field office</p> <p>11 that's listed is Laredo, correct?</p> <p>12 A. Correct.</p> <p>13 Q. All right. And for Laredo, Miss Good</p> <p>14 writes, quote, Laredo gives them an appointment open</p> <p>15 parens, verbally, closed parens, and tells them when</p> <p>16 to come back. Officers are on the bridge now as well</p> <p>17 as -- as well but the metering seems to have had a</p> <p>18 deterrent effect and they are not seeing too many</p> <p>19 cases daily, so they don't really have to meter at the</p> <p>20 moment. However, they are prepared to do so at any</p> <p>21 moment their capacity reaches its maximum.</p> <p>22 Did I read that correctly?</p>
<p style="text-align: right;">Page 171</p> <p>1 offices, correct?</p> <p>2 A. Correct.</p> <p>3 Q. Okay. So this is an e-mail exchange that</p> <p>4 you received in the course of your duties at CBP,</p> <p>5 correct?</p> <p>6 A. Correct.</p> <p>7 Q. And you would have received these e-mails</p> <p>8 on or about the times and dates listed on the e-mails,</p> <p>9 correct?</p> <p>10 A. Correct.</p> <p>11 Q. And you would have read and understood</p> <p>12 these e-mails at the time you received them, right?</p> <p>13 A. Correct.</p> <p>14 Q. And apart from the redactions that were</p> <p>15 just made, these -- this e-mail exchange appears to be</p> <p>16 true and correct, correct?</p> <p>17 A. Correct.</p> <p>18 Q. All right. Let's start with the El Paso</p> <p>19 field office. For that field office, Miss Good</p> <p>20 writes, quote, El Paso started giving out appointments</p> <p>21 and has since course corrected, open parens, this</p> <p>22 occurred sometime mid to end of last week, closed</p>	<p style="text-align: right;">Page 173</p> <p>1 A. Correct?</p> <p>2 Q. So Miss Good told you that at least at the</p> <p>3 Laredo field office the metering policy was having a</p> <p>4 deterrent effect, correct?</p> <p>5 A. It seemed to have a deterrent effect.</p> <p>6 Q. So when we talked earlier about -- and you</p> <p>7 said that you couldn't recall anyone ever telling you</p> <p>8 that the metering policy had a deterrent effect, in</p> <p>9 fact Ms. Good did tell you that?</p> <p>10 A. I did not recall this e-mail from November</p> <p>11 of 2016.</p> <p>12 Q. But you do recall now that in November 2016</p> <p>13 you were told that metering was having a deterrent</p> <p>14 effect, correct?</p> <p>15 A. Reading this e-mail, it appears to have a</p> <p>16 deterrent effect. Metering is having deterrent</p> <p>17 effect. Yes.</p> <p>18 Q. Okay. Do you recall following up with</p> <p>19 Ms. Good to understand what the phrase deterrent</p> <p>20 effect meant?</p> <p>21 A. No, I don't.</p> <p>22 Q. Do you recall telling Miss Good that the</p>

<p style="text-align: right;">Page 174</p> <p>1 purpose of metering was not to -- was not having a 2 deterrent effect?</p> <p>3 A. Can you --</p> <p>4 Q. Yeah. That was a bad question, so I'll ask 5 it a different way.</p> <p>6 Do you recall telling Miss Good that the 7 purpose, that deterrence was not a purpose of 8 metering?</p> <p>9 A. No. I don't believe I corrected Ms. Good 10 and told her that deterrent was not the purpose.</p> <p>11 Q. Okay.</p> <p>12 - - -</p> <p>13 (A document was marked as Deposition 14 Exhibit Number 35.)</p> <p>15 - - -</p> <p>16 BY MR. MEDLOCK:</p> <p>17 Q. All right, sir. I've put in front of you 18 what's been marked as Exhibit 35 to your deposition.</p> <p>19 A. Okay.</p> <p>20 Q. It is a one-page e-mail with the Bates 21 number AOL-DEF-00576607. And it is a November 12 22 through 14, 2016 e-mail exchange amongst Frank</p>	<p style="text-align: right;">Page 176</p> <p>1 Q. And then they can report up to supervisory 2 officers?</p> <p>3 A. First line, second line --</p> <p>4 Q. Second line.</p> <p>5 A. -- watch commander, deputy, dependent on 6 the structure, how big of the port, who then reports 7 to generally an assistant port director, to a port 8 director. Then the port director reports to the 9 director of field operations who has several port 10 directors under him within that geographical area.</p> <p>11 Now each director of field operations may 12 have two or three deputies depending on the size. 13 There are operational deputies, but technically the 14 port director reports to the DFO.</p> <p>15 Q. I see.</p> <p>16 A. But the deputies help do what deputies do. 17 So you'll see messages like this from the deputy down 18 to --</p> <p>19 Q. Yeah. And it says in a situation like this 20 the deputy is essentially managing up, for lack of a 21 better word for his --</p> <p>22 A. The deputy port director --</p>
<p style="text-align: right;">Page 175</p> <p>1 Longoria, Alberto Flores and others. Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. Do you recall what Albert Flores's position 4 was in the Laredo Port of Entry at this time?</p> <p>5 A. Looking at the e-mail, he was a deputy port 6 director for Laredo.</p> <p>7 Q. Thank you. And looking at the e-mail Frank 8 Longoria --</p> <p>9 A. Longoria.</p> <p>10 Q. Thank you. Was the assistant director of 11 field operations for border security in the Laredo 12 field office?</p> <p>13 A. In the field office. Correct.</p> <p>14 Q. Okay.</p> <p>15 A. The ports report to the field office.</p> <p>16 Q. Yeah. Let's actually go through that.</p> <p>17 A. Yeah.</p> <p>18 Q. So starting at the line officers.</p> <p>19 A. Yes.</p> <p>20 Q. You have CBP officers, got the very bottom 21 of the law enforcement pyramid, correct?</p> <p>22 A. Correct.</p>	<p style="text-align: right;">Page 177</p> <p>1 Q. -- DFO?</p> <p>2 A. -- was managing up for his port director to 3 the deputy DFO, who was managing for his DF. Yes.</p> <p>4 Q. Yes. This is how it works in the 5 government. The deputies help their principals out, 6 right?</p> <p>7 A. Correct. Yes, sir.</p> <p>8 Q. And then from those DFOs, they report up as 9 well?</p> <p>10 A. The DFOs report to the executive director 11 for operations, who reports to the deputy executive 12 assistant commissioner, who reports to me.</p> <p>13 Q. Okay. And then who do --</p> <p>14 A. And then I report to the deputy 15 commissioner the highest career person, who reports to 16 the commissioner that is a political.</p> <p>17 Q. Okay. Thank you. I appreciate that. And 18 I take it the commissioner reports to the secretary?</p> <p>19 A. Correct.</p> <p>20 Q. Okay.</p> <p>21 A. Yes, sir.</p> <p>22 Q. Okay. So you testified earlier that you</p>

<p style="text-align: right;">Page 178</p> <p>1 couldn't recall exactly whether in November 2016      2 whether the -- whether ports of entry in Texas were      3 being -- were actually being authorized to put      4 officers at limit line positions or if they were being      5 authorized to start metering. Do you recall that?      6 A. Yes.      7 Q. Okay. I'm focused down on the November 12,      8 2016 e-mail, 2:42 p.m., sent by Frank Longoria --      9 wait.</p> <p>10 - - -</p> <p>11 (Sirens interrupted, recessed at 1:16 p.m.)</p> <p>12 (Reconvened at 1:19 p.m.)</p> <p>13 - - -</p> <p>14 BY MR. MEDLOCK:</p> <p>15 Q. All right, sir. Focused on the November      16 12, 2016 e-mail from Frank Longoria at 2:42 p.m. at      17 the bottom of the e-mail chain. Do you see that?      18 A. Yes.      19 Q. All right. That e-mail has the subject      20 line Meeting with INM. Do you see that?      21 A. Yes.      22 Q. INM is a reference to INAMI, correct?</p>	<p style="text-align: right;">Page 180</p> <p>1 handle the overflow.      2 So in my recollection, we started metering      3 in the Laredo field office before November.      4 Q. Okay. But this e-mail certainly is      5 giving --      6 A. It was taking place in November.      7 Q. This -- sorry. And this e-mail from Frank      8 Longoria is definitely giving the port directors      9 authority to meter if they aren't already doing so,      10 correct?      11 A. To engage with the Mexicans to control the      12 flow. Yes.      13 Q. Okay.</p> <p>14 - - -</p> <p>15 (A document was marked as Deposition      16 Exhibit Number 36.)</p> <p>17 - - -</p> <p>18 BY MR. MEDLOCK:</p> <p>19 Q. Sir, I have marked for you Exhibit 36.      20 It's a multi-page document that begins with the Bates      21 number AOL-DEF-00703133 through 139. Do you see that?      22 A. Yes.</p>
<p style="text-align: right;">Page 179</p> <p>1 A. Correct.      2 Q. And that e-mail reads, Port directors, at      3 the request of C-1 and C22, you are to meet your INM      4 counterpart and request they control the flow of      5 aliens to the port of entry. For example, if you      6 determine you can only process 50 aliens at a time,      7 you will request that INM release only 50.      8 Did I read that correctly?      9 A. Yes.      10 Q. And then it goes on to give more details      11 about controlling the flow and the relationship with      12 INAMI, correct?      13 A. Correct.      14 Q. Does this refresh your recollection that in      15 November 2016 port directors in the Laredo field      16 office were given authorization to begin metering?      17 A. Again I still believe the metering was      18 occurring before November.      19 Q. Okay.      20 A. I mean, 2016 was the year we had to do the      21 metering because the volumes were so great. And by      22 November, we were putting up soft-sided facilities to</p>	<p style="text-align: right;">Page 181</p> <p>1 MS. SHINNERS: Again, I'm sorry, this      2 document is labeled as protected by attorney-client      3 and deliberative process privileges. I'm afraid I'm      4 going to have to claw this back. It looks like it's      5 insufficient -- I mean, it looks like it needs to be      6 clawed back in full.      7 So, again, defendant's have produced a      8 large volume of documents in this litigation, and we      9 continue to produce documents. It looks like this one      10 was just missed. I know that other versions of this      11 document were withheld in full.      12 MR. MEDLOCK: Okay. And you anticipate      13 clawing back and withholding it in full; is that      14 right?      15 MS. SHINNERS: Yes. I do need to review --      16 yes. I can review a little more carefully on the      17 break, but yes.      18 BY MR. MEDLOCK:      19 Q. Okay. I would ask you, if you can take the      20 document away from him I'll ask you just some general      21 questions.      22 Sir, are you aware of an office within CBP</p>

<p style="text-align: right;">Page 182</p> <p>1        called the Office of Civil Rights and Civil Liberties?</p> <p>2        A.     That office is within DHS not CBP.</p> <p>3        Q.     Thank you for the correction. And it's</p> <p>4        sometimes called CRCL?</p> <p>5        A.     Yes.</p> <p>6        Q.     Are you aware whether CRCL undertook any</p> <p>7        investigation related to metering at ports of entry?</p> <p>8        A.     I'm aware that CRCL received allegations</p> <p>9        that individuals who had crossed were returned, and</p> <p>10      that they were looking at those allegations, so yes.</p> <p>11      Q.     And were you spoken with or interviewed by</p> <p>12      anybody from CRCL in connection with that?</p> <p>13      A.     I was not interviewed with CRCL.</p> <p>14      Q.     Did you receive any findings or conclusions</p> <p>15      from that CRCL investigation?</p> <p>16      A.     I can't recall. I received quite a few</p> <p>17      documents from CRCL in this capacity. I can't recall</p> <p>18      if there's one specific to metering. There may have</p> <p>19      well been. I just don't recall.</p> <p>20      Q.     To the best of your recollection, when did</p> <p>21      this CRCL investigation with respect to allegations</p> <p>22      about metering begin?</p>	<p style="text-align: right;">Page 184</p> <p>1        A.     In their view. Yes.</p> <p>2        Q.     Okay. And you also received MCAT reports</p> <p>3        that said that individuals were being either held at</p> <p>4        the line or held in shelters when there was no impact</p> <p>5        to port capacity, correct?</p> <p>6        MS. SHINNERS: Objection. Mischaracterizes</p> <p>7        the document.</p> <p>8        A.     The no-impact deport capacity on that</p> <p>9        report is a general snapshot of significant issues to</p> <p>10      be brought to our attention. So I have, you know, I</p> <p>11      disagree with the fact that it says no impact,</p> <p>12      negative, non-- that that indicates that there was no</p> <p>13      impact to port operations. That column is used to</p> <p>14      call senior leadership's attention to something</p> <p>15      significant that had happened, such as a large number</p> <p>16      of port runners, an outbreak of tuberculosis, things</p> <p>17      of that nature.</p> <p>18      I don't take the presence of no, negative,</p> <p>19      none as meaning the metering is not having an impact</p> <p>20      to the ports.</p> <p>21      Q.     Okay. Let's go back -- and I apologize.</p> <p>22      I'm about to do a little bit of flipping through to</p>
<p style="text-align: right;">Page 183</p> <p>1        A.     To my recollection, in the first year or so</p> <p>2        of metering, so throughout 2016, early '17.</p> <p>3        Q.     Okay. So certainly before you signed the</p> <p>4        metering memorandum that we looked at earlier.</p> <p>5        A.     In 2018.</p> <p>6        Q.     You were aware that CRCL had investigated</p> <p>7        allegations related to metering, correct?</p> <p>8        A.     Correct.</p> <p>9        Q.     You were aware that the judiciary committee</p> <p>10      had questions about it?</p> <p>11      A.     Correct.</p> <p>12      Q.     You were aware that -- you had gotten</p> <p>13      e-mails before then saying that the policy had a</p> <p>14      deterrent effect, correct?</p> <p>15      A.     You have refreshed my recollection on one</p> <p>16      e-mail that used the word deterrent.</p> <p>17      Q.     Right. But you did receive an e-mail</p> <p>18      saying it was --</p> <p>19      A.     I received that one e-mail. Yes.</p> <p>20      Q.     And you also received an e-mail saying that</p> <p>21      Mexican officials said that the metering policy was</p> <p>22      causing the humanitarian crisis as well?</p>	<p style="text-align: right;">Page 185</p> <p>1        find the prior e-mail we looked at.</p> <p>2        A.     Yes.</p> <p>3        Q.     From I believe it was June 19, 2018. Do</p> <p>4        you have that in front of you, sir?</p> <p>5        A.     Sure.</p> <p>6        Q.     Which exhibit is that, if you could help me</p> <p>7        do my job.</p> <p>8        A.     Exhibit 24.</p> <p>9        Q.     So Exhibit 24 lists percentage capacities</p> <p>10      for various ports, correct?</p> <p>11      A.     Correct.</p> <p>12      Q.     And you said that that is physical</p> <p>13      capacity, not the actual detention capacity, correct?</p> <p>14      A.     Not operational capacity.</p> <p>15      Q.     Oh, I'm sorry. I got the wrong word.</p> <p>16      Operational capacity. Okay.</p> <p>17      Did you ever tell anyone from MCAT they</p> <p>18      should start listing operational capacities, not</p> <p>19      physical?</p> <p>20      A.     No.</p> <p>21      Q.     Did you ever criticize MCAT for not using</p> <p>22      the operational capacities?</p>

<p style="text-align: right;">Page 186</p> <p>1        A. No. Because as this report as I use it,    2 since it gives me a snapshot as to the number of folks    3 that are in our custody, how many folks are waiting in    4 Mexico, and any significant issues to be aware of,    5 that's how I used it. I didn't correct them on each    6 heading of the category of the report.</p> <p>7        Q. Sure. Did anybody to your knowledge in    8 senior leadership at CVP or OFO correct the -- request    9 that MCAT put together a version of this report that    10 actually used operational capacities?</p> <p>11      A. No. Because the operational capacity    12 differs from port to port and from day-to-day. And    13 that would just be too cumbersome to record every    14 event that's taking place in the port through out the    15 day, which has had an impact on how many migrants we    16 could come across. If a port was working multiple    17 simultaneous seizures, and then we had to pull    18 officers to do that, we wouldn't record all of those    19 activities. It's just too cumbersome of a report to    20 come together for the 46 crossings along the southwest    21 border as to what's taking place.</p> <p>22      And again, the operational capacity is</p>	<p style="text-align: right;">Page 188</p> <p>1        room. And there is a threshold limit as to what needs    2 to be reported.</p> <p>3        So seizures of certain amounts have to be    4 reported. There's a report that captures all of that    5 every day. Our counter-terrorism connections or    6 encounters gets reported up a different way, and we    7 receive a report on that. If we have outbound    8 operations underway, we would be made aware of those    9 that rise to a certain level of outbound operations.</p> <p>10      So the migrant processing is just one    11 aspect of what we do within the port every single day.    12 And there are different reports for those other    13 activities. And again, based on the operational area    14 we are talking about, the reports for the southern    15 border are different than the reports for the    16 airports, the sea ports, the northern border, and our    17 foreign operations.</p> <p>18      So to understand the operational aspect of    19 what's taking place at any one port at any one given    20 time, you need to look at all of those mission sets    21 and what's being done with all of that. And you also    22 have to then consider the staffing that we have on</p>
<p style="text-align: right;">Page 187</p> <p>1        fluid. It fluctuates from day to day. There may be    2 no capacity at 9:00 a.m, but ERO comes and picks folks    3 up at 11:00. And at 12 o'clock we have capacity.</p> <p>4        So this is a static view that gives us a    5 high level understanding of what's taking place in the    6 ports in terms of our capacity. The migrants that    7 have come in, the migrants that are waiting, and any    8 operation issues. That's how I see this report.    9 That's how I use the report.</p> <p>10      Q. And --</p> <p>11      A. And similar reports like this.</p> <p>12      Q. Yeah, sure. The queue management report as    13 well?</p> <p>14      A. Yeah. It's modeled differently, but    15 generally the same information.</p> <p>16      Q. Okay. Is it the case that there is no    17 regularly generated report at CBP or OFO that lists    18 the operational capacities for ports of entry on a    19 daily basis?</p> <p>20      A. No. There are multiple reports that deal    21 with our different mission sense. So there is    22 reporting that comes into what we call our situation</p>	<p style="text-align: right;">Page 189</p> <p>1        hand, things like that. When you look at Calexico    2 here, 74 percent of capacity -- but we have 20 percent    3 of our officers vacant in El Paso -- I'm sorry, in    4 Calexico.</p> <p>5        So we have a huge staffing issue in    6 Calexico, which impacts our ability to bring more    7 folks in to process them for their asylum claims.</p> <p>8        Q. So I think my question -- and I appreciate    9 your answer, but I think my question was just a little    10 bit more focused, which was there's no single report    11 that's generated that lists the operational capacities    12 for migrant processing at each port of entry on a    13 daily basis, is there?</p> <p>14      A. No, because the operational capacity is    15 influenced by all of our other mission sets. And    16 there's separate reports for those other missions    17 sets.</p> <p>18      Q. So is there any way that I could go back to    19 2016, 2017, or 2018 and reconstruct what the    20 operational capacity would have been at that port of    21 entry on a given day?</p> <p>22      A. I think it would be very, very difficult to</p>

<p style="text-align: right;">Page 190</p> <p>1 do that because of all the barriers that you would      2 need to consider, including how many officers called      3 in sick that day, how many may have been out at the      4 range, how many may have been processing seizures.      5 All of those variables impact our operational      6 capacity.</p> <p>7 You will not find that in one port or in      8 one report because the nuance is of everything that we      9 do in the port of entry. We haven't talked about the      10 trade mission. We haven't talked about passenger --      11 or traveler processing and wait times, cargo. We      12 haven't talked about the agriculture mission.</p> <p>13 We compete for limited resources in the      14 ports of entry. Migrant processing is one aspect of      15 what we do.</p> <p>16 Q. Okay.</p> <p>17 A. You are looking for a totality across the      18 board. There is not a single report that captures      19 that totality.</p> <p>20 Q. Okay. So as we sit here today, although      21 it's imperfect, the best snapshot we have of what was      22 going on with capacity in the port would be these MCAT</p>	<p style="text-align: right;">Page 192</p> <p>1 Q. Okay. And I think you testified to this      2 earlier. In 2018 -- so in general, just looking at      3 numbers of inadmissibles?</p> <p>4 A. Yes.</p> <p>5 Q. There's a fairly large number in 2016?</p> <p>6 A. Yes.</p> <p>7 Q. There was a large number but reduced in      8 2017?</p> <p>9 A. Correct.</p> <p>10 Q. 2018 was a very high year for      11 inadmissibles, correct?</p> <p>12 A. Correct. And '19 even higher.</p> <p>13 Q. So if I'm looking at this in sort of a      14 stair step fashion, was 2018 --</p> <p>15 A. Can I give you the --</p> <p>16 Q. Yeah. If you have got the numbers, I'll      17 take them.</p> <p>18 A. FY '15, about 111 -- I'm sorry, 113,000      19 inadmissibles.</p> <p>20 Q. Okay.</p> <p>21 A. FY '16 about 154,000 inadmissibles; '17      22 dropped to 111,000; '18 was 124,000, And '19 was</p>
<p style="text-align: right;">Page 191</p> <p>1 reports.</p> <p>2 Q. From the headquarters visibility aspect,      3 yes. But this is why we allow the queue management,      4 the metering to be controlled by the local port      5 directors and their management teams because they have      6 the day-to-day visibility as to what's going on.</p> <p>7 Q. I see.</p> <p>8 A. This report again gives me a snapshot at a      9 very high level from my position as the executive      10 assistant commissioner what's taking place in this one      11 mission space.</p> <p>12 Q. I see. Okay. We talked a little bit about      13 the metering guidance. Was there ever any subsequent      14 guidance that was given to field offices or port      15 directors regarding the implementation of the April      16 2018 metering guidance?</p> <p>17 A. I am not sure I follow. There was guidance      18 from Secretary Neilson a month or two later.</p> <p>19 Q. That's what I'm getting at.</p> <p>20 A. Yeah. Prioritizing the missions that we      21 have within the port. Yes. And that was sometime in      22 June of 2018.</p>	<p style="text-align: right;">Page 193</p> <p>1 126,000.</p> <p>2 Q. Okay.</p> <p>3 A. So those are in our inadmissible numbers      4 across the southwest border. I'm not giving you      5 airport inadmissibles and all of that.</p> <p>6 Q. And inadmissibles is a broader category of      7 an asylum seeker? That's how --</p> <p>8 A. Correct.</p> <p>9 Q. -- are part of it.</p> <p>10 A. In a -- yes, sir.</p> <p>11 Q. Okay. So in 2018 is a year where you are      12 seeing increased numbers of inadmissibles coming to      13 the ports?</p> <p>14 A. Compared to '17, yes.</p> <p>15 Q. Okay.</p> <p>16 A. But not as large as '16.</p> <p>17 Q. Right. And not as large as '19?</p> <p>18 A. Correct.</p> <p>19 Q. Okay.</p> <p>20 - - -</p> <p>21 (A document was marked as Deposition      22 Exhibit Number 37.)</p>

<p style="text-align: right;">Page 194</p> <p>1 - - -</p> <p>2 BY MR. MEDLOCK:</p> <p>3 Q. All right. 37 is a one-page e-mail, Bates</p> <p>4 number AOL-DEF-00371176?</p> <p>5 A. Correct.</p> <p>6 Q. And it's a e-mail from Valerie Boyd that</p> <p>7 you are copied on, dated May 29, 2018, correct?</p> <p>8 A. Correct.</p> <p>9 MS. SHINNERS: I'm so sorry.</p> <p>10 MR. MEDLOCK: There you go again.</p> <p>11 MS. SHINNERS: Here I go again. This</p> <p>12 contains insufficient redactions to protect the</p> <p>13 deliberative process privilege and potentially</p> <p>14 attorney-client, but I think the main issue is</p> <p>15 deliberative process. This is an mail from the deputy</p> <p>16 chief of staff to office of chief counsel.</p> <p>17 MR. MEDLOCK: I see that.</p> <p>18 MS. SHINNERS: At CBP.</p> <p>19 MR. MEDLOCK: Yes.</p> <p>20 MS. SHINNERS: So I -- yeah I think we have</p> <p>21 to claw this one back in full.</p> <p>22 MR. MEDLOCK: Okay.</p>	<p style="text-align: right;">Page 196</p> <p>1 A. Folks -- as I recall from the commissioner</p> <p>2 staff, as well as executive director Todd Hoffman,</p> <p>3 again my admissibility lead.</p> <p>4 MR. MEDLOCK: Can we go off the record for</p> <p>5 just a second.</p> <p>6 - - -</p> <p>7 (Discussion off the Record)</p> <p>8 - - -</p> <p>9 (A document was marked as Deposition Exhibit</p> <p>10 Number 38.)</p> <p>11 - - -</p> <p>12 BY MR. MEDLOCK:</p> <p>13 Q. All right, sir. We've put in front of you</p> <p>14 what we've marked as Exhibit 38 to your deposition. I</p> <p>15 is a one-page e-mail that has the Bates number</p> <p>16 AOL-DEF-0027393. It is an e-mail exchange between</p> <p>17 Valerie Boyd, yourself, John Wagner, Randy Howe and</p> <p>18 others, correct?</p> <p>19 A. Correct.</p> <p>20 Q. And this is an e-mail you would have</p> <p>21 received in the course of your duties at CBP, correct?</p> <p>22 A. Correct.</p>
<p style="text-align: right;">Page 195</p> <p>1 MS. SHINNERS: I'm not seeing anything</p> <p>2 that's possible to redact here.</p> <p>3 MR. MEDLOCK: Okay. So you are redacting</p> <p>4 -- sorry. You are clawing back 37 in full; is that</p> <p>5 correct?</p> <p>6 MS. SHINNERS: Correct.</p> <p>7 BY MR. MEDLOCK:</p> <p>8 Q. Okay. So let me ask you a more simple</p> <p>9 question out of the document. You said at some point</p> <p>10 there was an effort to put together a memorandum from</p> <p>11 the Secretary of Homeland Security regarding</p> <p>12 prioritization-based queue management, right?</p> <p>13 A. Prioritization resources, yeah, in relation</p> <p>14 to queue management.</p> <p>15 Q. And that memorandum was released in June of</p> <p>16 2018, correct?</p> <p>17 A. Yes, sir.</p> <p>18 Q. And were you -- yes or no, were you</p> <p>19 involved in the effort to put together that</p> <p>20 memorandum?</p> <p>21 A. Yes.</p> <p>22 Q. Who else was?</p>	<p style="text-align: right;">Page 197</p> <p>1 Q. And you would have received this e-mail at</p> <p>2 or about the times listed in the e-mail chain,</p> <p>3 correct?</p> <p>4 A. Correct.</p> <p>5 Q. And you would have read and understood the</p> <p>6 e-mail at the time you received it?</p> <p>7 A. Correct.</p> <p>8 Q. And you have no reason, sitting here, to</p> <p>9 believe that this e-mail is incomplete or inaccurate,</p> <p>10 right?</p> <p>11 A. No.</p> <p>12 Q. All right. The title of the e-mail is S1</p> <p>13 Memo Prioritization-based Queue Management. Do you</p> <p>14 see that?</p> <p>15 A. Yes.</p> <p>16 Q. And this is consistent with what you were</p> <p>17 saying earlier, there was a memo that was issued by</p> <p>18 the Secretary of Homeland Security in June 2018</p> <p>19 regarding prioritization-based queue management,</p> <p>20 correct?</p> <p>21 A. Yes.</p> <p>22 Q. In the top e-mail, Valerie Boyd wrote on</p>

<p style="text-align: right;">Page 198</p> <p>1 June 5, 2018, at 5:45 p.m.: OFO leadership, should we      2 gather with OPA, OCA and IPL to discuss the public      3 message around this 30-day pilot. Did I read that      4 correctly?</p> <p>5 A. Yes.</p> <p>6 Q. What is OPA?</p> <p>7 A. Office of Public Affairs.</p> <p>8 Q. What is OCA?</p> <p>9 A. Office of Congressional Affairs.</p> <p>10 Q. What is IPL?</p> <p>11 A. It's the office that deals with state and      12 local governments. I don't know what IPL stands for.</p> <p>13 Q. Okay. Fair enough. Do you understand what      14 the reference to 30-day pilot means in this e-mail?</p> <p>15 A. The secretary's memo called for a 30-day      16 pilot of directing resources towards certain priority      17 activities and assessing the results.</p> <p>18 Q. Okay. And do you know whether that 30-day      19 pilot was extended at any point?</p> <p>20 A. It was extended.</p> <p>21 Q. Was it made permanent?</p> <p>22 A. The activities continue today. Yes.</p>	<p style="text-align: right;">Page 200</p> <p>1 A. Yes.</p> <p>2 Q. And at the time you received the      3 memorandum, you would have read and understood it.      4 Correct?</p> <p>5 A. Yes.</p> <p>6 Q. And you would have -- this memo was dated      7 June 5, 2018, correct?</p> <p>8 A. Yes.</p> <p>9 Q. You would have received this memo on or      10 about June 5, 2018, correct?</p> <p>11 A. On or about. Yes.</p> <p>12 Q. And from looking at this memorandum, it      13 doesn't appear to be incomplete or inaccurate, does      14 it?</p> <p>15 A. No.</p> <p>16 Q. Okay. This is the June 2018      17 prioritization-based queue management memorandum that      18 we were talking about earlier, correct?</p> <p>19 A. Yes.</p> <p>20 Q. All right. I want to ask you about a few      21 statements in this memorandum. On the first page, the      22 third full paragraph that begins, CBP must.</p>
<p style="text-align: right;">Page 199</p> <p>1 Q. So from at least until today it's been      2 going on?</p> <p>3 A. It continues. Yes.</p> <p>4 Q. Okay. All right. Let's put 38 aside.</p> <p>5 - - -</p> <p>6 (A document was marked as Deposition      7 Exhibit Number 39.)</p> <p>8 - - -</p> <p>9 BY MR. MEDLOCK:</p> <p>10 Q. Sir, I'm showing you what I've marked as      11 Exhibit 39 to your deposition. I hope and pray this      12 is the final one and there will be no need to claw it      13 back. It is a multi-page memorandum that begins with      14 Bates number AOL-DEF-00273294 and continues to 296.</p> <p>15 Do you see that, sir?</p> <p>16 A. Yes.</p> <p>17 Q. And this is a June 5, 2018 memorandum for      18 Kevin McAleenan and Commissioner of CBP, from Kirstjen      19 Nielson, Secretary of Homeland Security, correct?</p> <p>20 A. Yes.</p> <p>21 Q. You would have received a copy of this      22 memorandum in the course of your work at CBP, correct?</p>	<p style="text-align: right;">Page 201</p> <p>1 A. Okay.</p> <p>2 Q. That sentence begins, "CBP must focus on      3 its primary mission to protect the American people      4 from dangerous people."</p> <p>5 Did I read that correctly?</p> <p>6 A. Yes.</p> <p>7 Q. Do you agree with that statement?</p> <p>8 A. Yes.</p> <p>9 Q. Do you think that is CBP's primary mission?</p> <p>10 A. Counter-terrorism, our primary mission.</p> <p>11 Yes. So dangerous people, counter-terrorism mission.</p> <p>12 Q. Okay. And then on the third page of the      13 memo, there on the page Bates number AOL-DEF-00273296,      14 do you see that there's a numbered list from 1 to 4      15 about in the middle of that page?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And right above that, do you see the      18 third line up ends with the phrase "I direct you."</p> <p>19 A. Yes.</p> <p>20 Q. Or I direct. That reads, "I direct you to      21 initiate a 30-day pilot program to prioritize staffing      22 and operations in accordance with following order of</p>

<p style="text-align: right;">Page 202</p> <p>1 priority at all southwest and border ports of entry."</p> <p>2 Did I read that correctly?</p> <p>3 A. Yes.</p> <p>4 Q. And the first priority is national security</p> <p>5 efforts?</p> <p>6 A. Yes.</p> <p>7 Q. Second is counter-narcotics operations?</p> <p>8 A. Yes.</p> <p>9 Q. Third is economic security?</p> <p>10 A. Yes.</p> <p>11 Q. And the fourth is trade and travel</p> <p>12 facilitation?</p> <p>13 A. Yes.</p> <p>14 Q. And within trade and travel facilitation is</p> <p>15 where processing of asylum seekers would fall,</p> <p>16 correct?</p> <p>17 A. No. That trade and travel facilitation is</p> <p>18 those that have lawful documents to enter the country.</p> <p>19 Q. I see. So processing asylum seekers does</p> <p>20 not fall on this one through four prioritization,</p> <p>21 correct?</p> <p>22 A. Correct.</p>	<p style="text-align: right;">Page 204</p> <p>1 processing asylum seekers; is that right?</p> <p>2 A. And other activities as well.</p> <p>3 Q. Sure. Are there other activities that you</p> <p>4 would put above processing asylum seekers in the</p> <p>5 prioritization list for CBP?</p> <p>6 A. That's really hard to say because depending</p> <p>7 on, you know, the four categories you have, certain</p> <p>8 aspects of our mission set that may not be directly</p> <p>9 listed would fall under, you know, our agriculture</p> <p>10 inspection mission, the pest and the disease on plants</p> <p>11 and things of that nature. You could put that as</p> <p>12 economic security. You could also put it as trade and</p> <p>13 facilitation.</p> <p>14 There are other things that are probably</p> <p>15 outside of that area. I'm just trying to think. I</p> <p>16 mean, I think the top four, which have always been our</p> <p>17 primary focus, capture that on processing the</p> <p>18 undocumented as, you know, not been within the top</p> <p>19 four.</p> <p>20 Q. It never has been during the time you have</p> <p>21 been at CBP, correct?</p> <p>22 A. Not -- no, not in the time we have been</p>
<p style="text-align: right;">Page 203</p> <p>1 Q. It would be somewhere below the top four</p> <p>2 priorities?</p> <p>3 A. Correct.</p> <p>4 Q. The next sentence after the one through</p> <p>5 four prioritization reads, "Processing persons without</p> <p>6 documents required by law for admission arriving at</p> <p>7 the southwest border remains a component of CBP's</p> <p>8 mission but priorities should be given to the efforts</p> <p>9 described above in the prescribed order."</p> <p>10 Did I read that correctly?</p> <p>11 A. Yes.</p> <p>12 Q. And that is consistent with CBPs policy to</p> <p>13 the present day, correct?</p> <p>14 A. This is CBP's policy since we were created</p> <p>15 in 2003.</p> <p>16 Q. So it's always been -- this merely</p> <p>17 memorializes a preexisting prioritization?</p> <p>18 A. Correct. Counter-terrorism, followed by</p> <p>19 narcotics, trade and travel, and economic security</p> <p>20 have always been our four top priority missions.</p> <p>21 Q. And it's always been the case that those</p> <p>22 four top priority missions had a higher priority than</p>	<p style="text-align: right;">Page 205</p> <p>1 CBP.</p> <p>2 Q. So would you say that the agriculture</p> <p>3 mission that you've described has a higher priority</p> <p>4 than processing asylum seekers?</p> <p>5 A. Yes.</p> <p>6 Q. Can you think of any activities that CBP is</p> <p>7 required to do by statute that are of a lower priority</p> <p>8 than processing asylum seekers?</p> <p>9 A. That we are required to do by statute.</p> <p>10 Q. Yes.</p> <p>11 A. I mean, all cargo and passengers, travelers</p> <p>12 entering the country have to be presented for</p> <p>13 inspection. I can't think of anything by statute that</p> <p>14 would be lower priority.</p> <p>15 Q. So the lowest priority for CBP of the</p> <p>16 things it's required to do by statute is processing</p> <p>17 asylum seekers; is that right?</p> <p>18 A. Yes. Processing the undocumented.</p> <p>19 Q. Right. They --</p> <p>20 A. The may or may not be --</p> <p>21 Q. Of the things you are required to do, they</p> <p>22 come last?</p>

<p style="text-align: right;">Page 206</p> <p>1        A. Right. But as they present without      2 documentation, they may or may not be requesting      3 asylum.</p> <p>4        Q. Right.</p> <p>5        A. Right.</p> <p>6        Q. So processing the undocumented is the      7 lowest of the statutorily required priorities; is that      8 right?</p> <p>9        A. Yes.</p> <p>10      Q. And that's true even when the number of      11 undocumented migrants presenting at ports of entry are      12 -- is increasing, correct?</p> <p>13      A. Can you rephrase? Ask the question.</p> <p>14      Q. Sure. I guess my question is we talked      15 about in 2018 the number of inadmissibles coming to      16 ports of entry had increased over 2017?</p> <p>17      A. Correct.</p> <p>18      Q. And in response to that, CBP did not      19 reorder its prioritization, did it?</p> <p>20      A. Correct. We did not reassign officers from      21 counter-terrorism, narcotics, economic security, trade      22 facilitation so that we could process more</p>	<p style="text-align: right;">Page 208</p> <p>1        the Agency.</p> <p>2        Q. So fruit flies higher priority than the      3 asylum seekers, right?</p> <p>4        A. Wiping out --</p> <p>5            MS. SHINNERS: Objection. Argumentative.</p> <p>6            THE WITNESS: I'm sorry.</p> <p>7            BY MR. MEDLOCK:</p> <p>8        Q. Go ahead.</p> <p>9            MS. SHINNERS: You can answer.</p> <p>10      A. I would say wiping out the economies in      11 Florida and California because of an infestation of      12 fruit flies remains a high priority to prevent that,      13 as opposed to processing an undocumented migrant      14 quicker.</p> <p>15      Q. Inspecting pigs is a higher priority than      16 inspecting asylum seekers, right?</p> <p>17      A. Preventing Asian swine flu from entering      18 the country and decimating the pork industry of the      19 United States and likely Canada is a high priority.</p> <p>20      Q. But the way you do that is you look at pigs      21 coming into --</p> <p>22      A. We inspect agriculture and agricultural</p>
<p style="text-align: right;">Page 207</p> <p>1        undocumented migrants or process them quicker. We      2 left those resources aligned with the priority      3 mission.</p> <p>4        Q. Theoretically, you could -- CBP could do      5 that, but it chooses not to do that, correct?</p> <p>6        A. Theoretically, it would be a trade-off.      7 And would you make the choice to have less folks      8 working the counter-terrorism mission set, or less      9 folks working the narcotics mission set, et cetera.      10 Those are trade-offs that I'm not willing to make.</p> <p>11      Q. Okay. And you are not willing to trade off      12 between the agriculture mission set and the processing      13 undocumented migrants?</p> <p>14      A. I am not, because the agriculture mission      15 set prevents plant and animal diseases from entering      16 the country. If we allowed the fruit fly to get in,      17 it would devastate economies in Florida and      18 California. If we allow the Asian swine flu and      19 things of that nature to get in, it would decimate our      20 pork industry.</p> <p>21      So the agriculture priority of preventing      22 pests and disease from entering is a top priority for</p>	<p style="text-align: right;">Page 209</p> <p>1        products entering the country.</p> <p>2        Q. And in the case of swine flu, you are      3 looking at pigs, right?</p> <p>4        A. Pigs and meat.</p> <p>5        Q. They are the carriers of swine flu?</p> <p>6        A. Right. Pork products. Yes.</p> <p>7        Q. And --</p> <p>8        A. Not necessarily pigs. It may be --</p> <p>9        Q. Chicken too, right?</p> <p>10      A. -- pig products. It may be, you know,      11 different types of consumables involving pork.</p> <p>12      Q. Sure. It could be live pigs or dead pigs      13 or parts of dead pigs?</p> <p>14      A. There's different pathways for these      15 diseases to come into the country.</p> <p>16      Q. And CBP has chosen to prioritize inspecting      17 those products over inspecting asylum seekers, right?</p> <p>18      A. We have chose to prioritize preventing      19 dangerous animal and plant disease from entering the      20 country at the exchange of processing migrants slower.</p> <p>21      Q. Right. Got it. So what that looks like at      22 a port level is if a shipment of pork products comes</p>

<p style="text-align: right;">Page 210</p> <p>1 in, and there are migrants that are -- there's a line      2 of migrants waiting to be processed, you are going to      3 prioritize inspecting the pork products over      4 inspecting the asylum -- the migrants, correct?      5 A. We will prioritize the inspection of      6 harmful products over time quickly processing an      7 undocumented migrant seeking entry. If the      8 undocumented migrant has to wait in line longer      9 because we have to conduct those inspections, then      10 that's what we will do.</p> <p>11 Q. So be it, right?</p> <p>12 A. So be it.</p> <p>13 Q. Got it. So you have a -- CBP has a      14 statutory duty to inspect products that are coming      15 into the U.S. for harmful diseases, correct?</p> <p>16 A. As well as health and safety issues, the      17 whole gamut of what we do at the port of entry,      18 counterfeit goods, you know.</p> <p>19 Q. Those are statutory duties though, right?</p> <p>20 A. We have statutory to inspect, right.</p> <p>21 Q. And you have a statutory duty to inspect      22 asylum seekers?</p>	<p style="text-align: right;">Page 212</p> <p>1 (Phone interruption)      2 BY MR. MEDLOCK:      3 Q. My question was you have chosen as an      4 agency to prioritize inspecting plants and animals      5 over inspecting undocumented migrants, correct?      6 A. Since CBP was created in 2003, yes.      7 Q. Okay. All right, sir. Do you still have      8 Exhibit 39 in front of you?      9 A. Yes.      10 Q. Okay. So 39 is dated June 5, 2018,      11 correct?      12 A. I'm sorry. 39. Yes.      13 Q. And we read some language in there that      14 referred to it as a 30-day pilot, correct?      15 A. Correct.      16 - - -      17 (The documents were marked as Deposition      18 Exhibit Numbers 40 and 41.)      19 - - -      20 BY MR. MEDLOCK:      21 Q. And I've put in front of you what we've      22 marked Exhibits 40 and 41. 40 is a one-page document</p>
<p style="text-align: right;">Page 211</p> <p>1 A. We have responsibility to inspect --      2 everyone who's presented themselves for entry into the      3 United States.</p> <p>4 Q. Right. So you have to do it all. It's not      5 a question of prioritizing. The statute says you have      6 to do both, right?</p> <p>7 MS. SHINNERS: Objection to the extent it      8 calls for a legal conclusion from a lay witness.</p> <p>9 Q. Okay.</p> <p>10 A. We have a wide scope of responsibilities in      11 the ports every day. We have to prioritize those      12 activities, direct the limited resources that we have      13 to those that are of greater concern.</p> <p>14 Q. Yeah. And my question is you have to      15 inspect plants, animals, people to include      16 undocumented migrants; those are all duties you have?</p> <p>17 A. And we do inspect undocumented migrants.</p> <p>18 Q. Sure. But you have chosen to prioritize      19 inspecting plants and animals over inspecting      20 undocumented migrants, correct?</p> <p>21 A. We will inspect undocumented migrants.</p> <p>22 Q. Not my question. You have chosen --</p>	<p style="text-align: right;">Page 213</p> <p>1 with the Bates number AOL-DEF-00039620. And 41 is a      2 two-page document with the Bates numbers ending in 621      3 through 622. And I want to focus on 40 for a minute.      4 It is a document with the subject line      5 Evaluation of Queue Management Pilot. Do you see      6 that?</p> <p>7 A. Yes.</p> <p>8 Q. And it's listed as from Kevin McAleenan,      9 correct?</p> <p>10 A. Correct.</p> <p>11 Q. And it's dated August 1, 2018, correct?</p> <p>12 A. Correct.</p> <p>13 Q. And then the bottom there are boxes for      14 approve/date, disapproved/date, needs discussions/date      15 and modify/date. Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. And there was -- this was a form for      18 evaluating and approving whether the pilot project      19 discussed in Exhibit 39 would be continued, correct?</p> <p>20 A. It appears so.</p> <p>21 Q. Okay. And then if you look at Exhibit 41,      22 on the first page it says, Evaluation of</p>

<p style="text-align: right;">Page 214</p> <p>1 Prioritization Queue Management Pilot. Do you see 2 that?</p> <p>3 A. Yes.</p> <p>4 Q. And it says, Action Required, quote, 5 Approval from the Secretary of Homeland Security to 6 implement queue management protocols along the 7 southwest border. Do you see that?</p> <p>8 A. I see where it says that.</p> <p>9 Q. Okay. And this is consistent with your 10 recollection that after the 30-day pilot described in 11 Exhibit 39 concluded, it was extended by the Secretary 12 of Homeland Security, correct?</p> <p>13 A. I do not recall a document that said 14 continue the pilot. I just know we remain under these 15 priorities today, as we did since 2003 priority to the 16 issuance of this letter.</p> <p>17 Q. I see so. It's regardless of whether 40 18 and 41 were actually executed, that's still what's 19 going on today?</p> <p>20 A. This has now been updated.</p> <p>21 Q. And I'll show you that in a second.</p> <p>22 A. Right. So this was going on until the</p>	<p style="text-align: right;">Page 216</p> <p>1 Q. So this is a formal memorandum that you 2 would have received on or about November 27, 2019, 3 correct?</p> <p>4 A. Yes.</p> <p>5 Q. And you would have received this as part of 6 your job at CBP, correct?</p> <p>7 A. Yes.</p> <p>8 Q. And when you look at this memorandum, does 9 anything in the memorandum appear to be missing or 10 incomplete to you?</p> <p>11 A. No.</p> <p>12 Q. And when you received this memorandum, you 13 would have read and understood its contents, correct?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And at the -- I'm on the first page 16 of the memorandum, the page ending 303. It has a 17 section called Background and Purpose. Do you see 18 that?</p> <p>19 A. Yes.</p> <p>20 Q. And it makes reference to the June 5, 2018 21 memorandum called Prioritization-Based Queue 22 Management, correct?</p>
<p style="text-align: right;">Page 215</p> <p>1 updated memo from Commissioner Morgan.</p> <p>2 Q. Okay. I will not keep you in suspense on 3 that.</p> <p>4 - - -</p> <p>5 (A document was marked as Deposition 6 Exhibit Number 42.)</p> <p>7 - - -</p> <p>8 BY MR. MEDLOCK:</p> <p>9 Q. Put in front of you what we've marked as 10 Exhibit 42 to your deposition. It is a multi-page 11 memorandum that bears the leading Bates number CBP AL 12 OTRO 000303 and ends with 308. This is the memorandum 13 from Mark Morgan that you were referring to, correct?</p> <p>14 A. Correct.</p> <p>15 Q. And just for clarity, Mark Morgan is the 16 acting commissioner of CBP, correct?</p> <p>17 A. Correct. Today. Yes.</p> <p>18 Q. And the memorandum is for you, correct?</p> <p>19 A. Correct.</p> <p>20 Q. All right. And it's dated November 27, 21 2019?</p> <p>22 A. Yes.</p>	<p style="text-align: right;">Page 217</p> <p>1 A. Yes.</p> <p>2 Q. And it indicates that that memorandum is 3 attached, correct?</p> <p>4 A. Correct.</p> <p>5 Q. And if you actually flip through, there's a 6 copy of the prior -- what we previously looked at as 7 Exhibit 39 attached to Exhibit 42, correct?</p> <p>8 A. Yes.</p> <p>9 Q. And the subject line of the November 27, 10 2019, memorandum depicted at the page in ending in 303 11 is Prioritization-Based Queue Management, correct?</p> <p>12 A. Correct.</p> <p>13 Q. And this memorandum, if you start on the 14 first page ending in 303, going on to the page ending 15 in 304, has a four-pronged prioritization of the 16 missions at CBP, correct?</p> <p>17 A. Correct.</p> <p>18 Q. And those are the same four priority 19 missions that were listed in the June 5, 2018 20 memorandum?</p> <p>21 A. Except for number 2, counter narcotics has 22 now been expanded for a renewed focus on outbound</p>

<p style="text-align: right;">Page 218</p> <p>1 operations.</p> <p>2 Q. Can you just define really quickly for me</p> <p>3 what outbound operations means?</p> <p>4 A. Outbound operations along the southwest</p> <p>5 border are targeted enforcement actions to keep the</p> <p>6 money and the guns from flowing south into Mexico.</p> <p>7 Q. Okay. Drugs come up --</p> <p>8 A. Money goes down.</p> <p>9 Q. Money goes down. Got it. Okay. With that</p> <p>10 one change, this is essentially -- this memorandum in</p> <p>11 Exhibit 42 is memorializing the same practices that</p> <p>12 were memorialized in Exhibit 39, correct?</p> <p>13 A. Yes. With current updated statistics.</p> <p>14 Q. Right. And as you testified earlier, this</p> <p>15 has been the -- whether it's been memorialized in a</p> <p>16 memo or not, this has been how the policy of CBP has</p> <p>17 operated since it became CBP?</p> <p>18 A. Correct.</p> <p>19 Q. Okay. So I take it that your answers</p> <p>20 regarding prioritization and trade-offs with respect</p> <p>21 to Exhibit 39 would be the same with respect to</p> <p>22 Exhibit 42?</p>	<p style="text-align: right;">Page 220</p> <p>1 - - -</p> <p>2 (A document was marked as Deposition</p> <p>3 Exhibit Number 43.)</p> <p>4 - - -</p> <p>5 BY MR. MEDLOCK:</p> <p>6 Q. All right gith. Marked a copy of a</p> <p>7 multi-page document that I'll represent to you is the</p> <p>8 complaint in this litigation. It begins with the</p> <p>9 Bates number AOL-DEF-00088503. Do you see that, sir?</p> <p>10 A. Yes, sir.</p> <p>11 Q. And there's handwriting on this document?</p> <p>12 A. Yes.</p> <p>13 Q. Do you see that? At the top, I believe it</p> <p>14 says something like received?</p> <p>15 A. Reviewed.</p> <p>16 Q. Or reviewed 7/14/17, correct?</p> <p>17 A. Yes.</p> <p>18 Q. Is that your handwriting?</p> <p>19 A. Yes, it is.</p> <p>20 Q. So if you look at the very top of the</p> <p>21 document in the middle, it says filed 7/12/17,</p> <p>22 correct? Very, very top?</p>
<p style="text-align: right;">Page 219</p> <p>1 A. Yes, sir.</p> <p>2 Q. Do you know why it was necessary to draft</p> <p>3 another memorandum if you already had the Secretary</p> <p>4 memorandum?</p> <p>5 A. The new memorandum includes outbound.</p> <p>6 Q. Okay.</p> <p>7 A. And that has been an issue of discussion</p> <p>8 between this administration and the Mexican</p> <p>9 administration. They believe we should be doing more</p> <p>10 to prevent weapons from entering Mexico. That's the</p> <p>11 general basis for why the new memo -- because it</p> <p>12 includes outbound.</p> <p>13 Q. Okay. Thank you for clarifying. That was</p> <p>14 a bit of a mystery to me, to be honest.</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Do you recall receiving a copy of</p> <p>17 the complaint in this litigation shortly after it was</p> <p>18 filed in 2017?</p> <p>19 A. I remember receiving it. I don't remember</p> <p>20 if it came from counsel or if it was received direct,</p> <p>21 but I remember seeing it. Yes.</p> <p>22 Q. Okay. Mark the next exhibit.</p>	<p style="text-align: right;">Page 221</p> <p>1 A. Where?</p> <p>2 Q. Of the first page?</p> <p>3 A. Filed 7/12.</p> <p>4 Q. 7/12/17.</p> <p>5 A. Okay.</p> <p>6 Q. So it appears this document was filed on</p> <p>7 July 12, 2017. And you reviewed it two days later on</p> <p>8 the 14th, correct?</p> <p>9 A. Correct.</p> <p>10 Q. And if you flip through the document, for</p> <p>11 example, looking at the page in 8505, the introduction</p> <p>12 page, it looks like you've underlined a few phrases in</p> <p>13 here; is that correct?</p> <p>14 A. Appears so. Yes.</p> <p>15 Q. And then if you look at page 4, at</p> <p>16 paragraph 11, you circled a few things as well,</p> <p>17 correct.</p> <p>18 A. Circled things. Okay. Correct.</p> <p>19 Q. Is that usually your process when you are</p> <p>20 reviewing documents?</p> <p>21 A. Legal documents when I'm not a lawyer.</p> <p>22 Q. Right. That is very fair. Starting in</p>

<p style="text-align: right;">Page 222</p> <p>1 paragraph 19, on page 6, which ends in the Bates 2 Number 8510; do you see that paragraph, sir?</p> <p>3 A. Yes.</p> <p>4 Q. There's a reference to a plaintiff named 5 Abigail Doe who is referred to by the pseudonym AD. 6 Do you see that?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Did you ever participate in any effort to 9 unmask the pseudonyms of the plaintiffs in this 10 litigation?</p> <p>11 A. No. No.</p> <p>12 Q. Did anybody ever tell you, ever unmask for 13 you the pseudonyms of the plaintiffs in this 14 litigation?</p> <p>15 A. No.</p> <p>16 Q. Okay. Without going into any conversations 17 you had with attorneys in this case for the 18 government, can you tell me why you reviewed, 19 underlined and circled things on this document in 20 2017?</p> <p>21 A. Because I was named in the lawsuit.</p> <p>22 Q. That was your primary concern?</p>	<p style="text-align: right;">Page 224</p> <p>1 Rodriguez -- Charmaine Rodriguez, Pete Flores, Rosa 2 Hernandez, Robert Hood and others. Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. And the title of the e-mail is 5 Lawsuit Documents, correct?</p> <p>6 A. Yes.</p> <p>7 Q. And in the bottom e-mail from Charmaine 8 Rodriguez there is -- Charmaine says, quote, Attached 9 are the two documents we looked at today from the 10 lawsuit. I will update them as soon as we know more 11 information from Berg Electric on the issue with AEU 12 video.</p> <p>13 Did I read that correctly?</p> <p>14 A. Yes.</p> <p>15 Q. Were you aware of any meetings that were 16 going on regarding the lawsuit, this lawsuit between 17 Charmaine Rodriguez, Pete Flores and others in August 18 2017?</p> <p>19 A. No, not that I recall.</p> <p>20 Q. So you weren't read into the loop on this 21 effort?</p> <p>22 A. I'm not on the e-mail distribution here. I</p>
<p style="text-align: right;">Page 223</p> <p>1 A. That was my concern. That's why on page 3 2 it also said circled -- I'm being sued in my official 3 capacity, you know, so I circled that.</p> <p>4 Q. That would have been important to you, I 5 suppose?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Yes. All right. I think I understand the 8 reason for that.</p> <p>9 A. Yes.</p> <p>10 - - -</p> <p>11 (A document was marked as Deposition 12 Exhibit Number 44.)</p> <p>13 - - -</p> <p>14 BY MR. MEDLOCK:</p> <p>15 Q. All right, sir. I've put in front of you 16 what we have marked as Exhibit 44 to your deposition. 17 It's a one page e-mail exchange that bears the Bates 18 number AOL-DEF-00723886.</p> <p>19 Do you see that, sir?</p> <p>20 A. Yes.</p> <p>21 Q. All right. This is an e-mail exchange 22 dated from August 1 through August 14, 2017, with</p>	<p style="text-align: right;">Page 225</p> <p>1 don't know who Burg Electric is.</p> <p>2 Q. Okay. Mark the next exhibit.</p> <p>3 - - -</p> <p>4 (A document was marked as Deposition 5 Exhibit Number 45.)</p> <p>6 - - -</p> <p>7 BY MR. MEDLOCK:</p> <p>8 Q. So I'll try to marry these two documents up 9 together, but if you look at Exhibit 44 --</p> <p>10 MS. SHINNERS: If I may interrupt. Is this 11 attached to an e-mail to counsel?</p> <p>12 MR. MEDLOCK: No. It's actually attached 13 to Exhibit 44.</p> <p>14 MS. SHINNERS: Oh, it was attached.</p> <p>15 BY MR. MEDLOCK: Yeah. I'll make that 16 clear in just a second.</p> <p>17 BY MR. MEDLOCK:</p> <p>18 Q. So do you see at the top of Exhibit 44 19 there's an e-mail from Moises Castillo to Variza 20 Marin?</p> <p>21 A. Yes.</p> <p>22 Q. And at least one other person. And there's</p>

<p style="text-align: right;">Page 226</p> <p>1 an attachment to that e-mail called AL Otro Lado 2 complaint dot -- doc X. Do you see that? 3 A. Yes. 4 Q. Okay. And I'll represent to you that this 5 document, Exhibit 45, is that attachment. 6 A. Okay. 7 Q. And it bears the Bates numbers 8 AOL-DEF-00723887 through 892. Do you see that? 9 A. Yes. 10 MS. SHINNERS: I mean, this is quite 11 clearly work product. I mean, I apologize for the 12 interruption, and again if it was produced without 13 appropriate markings, but this appears to be an 14 analysis of -- or a summary of the lawsuit. 15 MR. MEDLOCK: So -- 16 MS. SHINNERS: And we wouldn't even have to 17 -- well, continue. 18 MR. MEDLOCK: Okay. Just so we are clear, 19 I don't know if you are clawing it back, if that's 20 what your game is but -- 21 MS. SHINNERS: Go ahead. 22 MR. MEDLOCK: Okay. But this does not</p>	<p style="text-align: right;">Page 228</p> <p>1 in part during this deposition. Obviously we need to 2 work through these issues and, you know, we are going 3 to have to hold the deposition open because of those 4 claw backs. If we determine that there's not a valid 5 basis for the privilege, I was prepared to ask the 6 witness questions about them, and I want to ask him 7 questions about them. 8 MS. SHINNERS: Are you speaking just of the 9 document that's in front of you now? 10 MR. MEDLOCK: I do agree there are some 11 documents in here that I think you probably have a 12 pretty strong privilege claim for, but this document 13 in particular I would like to ask questions about. 14 And if we have to come back and do that, we'll do it. 15 MS. SHINNERS: Perhaps on the next break -- 16 if we can do some investigation on the next break, 17 perhaps we can. But, for the record, there are 18 270,000 documents, over 270,000 documents produced in 19 this litigation, so just responding to your point 20 regarding the claw-backs. And at least if we can come 21 to the agreement right now, if you would like to allow 22 us to do some further investigation, at this time I</p>
<p style="text-align: right;">Page 227</p> <p>1 appear to be an e-mail exchange that counsel is on. 2 This seems to be an effort done by people other than 3 counsel to do this. I haven't seen any -- to be 4 frank, I haven't seen any e-mail that indicates this 5 was directed by counsel. 6 MS. SHINNERS: Which wouldn't actually 7 matter, because such materials could be prepared by a 8 party. However, even -- 9 MR. MEDLOCK: That's not how work product 10 works. But continue. 11 MS. SHINNERS: We are clawing back the 12 document. If further investigation reveals that it is 13 not work product -- but at this time I have no reason 14 to believe it is not work product, whether done by 15 counsel or at the direction of counsel. If you want 16 to ask questions about the facts that you are trying 17 to get at, Mr. Owen is not even on these e-mails so -- 18 MR. MEDLOCK: Okay. So here's -- if you 19 want to claw it back, that's fine. We can handle that 20 through separate correspondence. I do want to just 21 make a record that there's now been five or six 22 documents that have been clawed back either in full or</p>	<p style="text-align: right;">Page 229</p> <p>1 believe we'll be clawing it back. I think it's quite 2 clearly work product, but -- 3 MR. MEDLOCK: Okay. Why don't we do this. 4 I'll move on to a different topic, and then we can 5 take a break, and you guys can take look at that, at 6 those documents. 7 MS. SHINNERS: We don't want to waive any 8 protections that -- 9 MR. MEDLOCK: I understood. 10 - - - 11 (A document was marked as Deposition 12 Exhibit Number 46.) 13 - - - 14 BY MR. MEDLOCK: 15 Q. I've put in front of you a document, 16 Exhibit 46 is a document bearing the Bates number 17 NTEU-000132. It's an e-mail from William T. Haralson 18 to David Higgerson with cc's to David Atkinson, Eric 19 Claw and Eduardo Ponce. 20 Do you see that, sir? 21 A. I see that. 22 Q. And this e-mail is dated March 15, 2017?</p>

<p style="text-align: right;">Page 230</p> <p>1 A. Correct.</p> <p>2 Q. Okay. And we talked -- this is an e-mail</p> <p>3 with -- from an NTEU representative, correct?</p> <p>4 A. Correct.</p> <p>5 Q. And we talked about NTEU earlier. They are</p> <p>6 -- it's the National Treasury Employees Union. They</p> <p>7 represent CBP officers at some of the ports of entry</p> <p>8 on the southwest border, correct?</p> <p>9 A. They represent all CBP officers.</p> <p>10 Q. Okay,</p> <p>11 A. Yeah.</p> <p>12 Q. And this e-mail is to David Higgerson. Do</p> <p>13 you remember what his position would have been at this</p> <p>14 time?</p> <p>15 A. He was the -- at this time the director of</p> <p>16 field operations for the Laredo field office.</p> <p>17 Q. Okay. This e-mail from William Haralson</p> <p>18 begins, "During the grievance meetings, Agency</p> <p>19 representatives acknowledge that the Agency's</p> <p>20 unilateral work policies broke CBP mandates, federal</p> <p>21 immigration rules and laws in formally processing</p> <p>22 persons who seek political asylum, and screening for</p>	<p style="text-align: right;">Page 232</p> <p>1 A. What I'm saying is they make so many</p> <p>2 allegations about every issue in the Hidalgo area that</p> <p>3 this is in line with what I typically see coming out</p> <p>4 of that chapter.</p> <p>5 Q. So in March 15, 2017, the metering policy</p> <p>6 would have been in effect at the Hidalgo Port of</p> <p>7 Entry, correct?</p> <p>8 A. Correct.</p> <p>9 Q. Okay. And there is a grievance from the</p> <p>10 NTEU Chapter 149 that claims that the CBP is denying</p> <p>11 blocking asylum to persons and families in order to</p> <p>12 block the flow of asylum applicants, correct?</p> <p>13 A. That's what the e-mail says.</p> <p>14 Q. And the e-mail also says it's having</p> <p>15 chilling effects, correct?</p> <p>16 A. According to the chapter.</p> <p>17 Q. Okay. Is it your position that the chapter</p> <p>18 is just making that up?</p> <p>19 A. It is my position that related to the</p> <p>20 metering the chapter wanted more officers on the limit</p> <p>21 line on overtime.</p> <p>22 Q. Let me make the question even clearer. Is</p>
<p style="text-align: right;">Page 231</p> <p>1 possible terrorist or fugitive status, which places</p> <p>2 CBP officers' safety, integrity and position to be</p> <p>3 questioned, as the Agency lacks candor to the public</p> <p>4 in stating the true facts that the Agency</p> <p>5 intentionally placed the changes of denying and</p> <p>6 blocking asylum to persons and families in order to</p> <p>7 block the flow of asylum applicants in a chilling</p> <p>8 affects to all others attempting entry into the United</p> <p>9 States.</p> <p>10 Did I read that first paragraph correctly?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Did Mr. Higgerson ever make you</p> <p>13 aware of that e-mail?</p> <p>14 A. No. Not that I recall. Chapter 149 of the</p> <p>15 local, Local NTEU Chapter 149 is one of our most</p> <p>16 problematic local chapters. And they file grievances</p> <p>17 on everything. So I'm not -- I don't recall this</p> <p>18 grievance, but this type of language where they</p> <p>19 believe we are breaking federal laws is consistent</p> <p>20 with every grievance that they file.</p> <p>21 Q. Okay. So they are just problematic in your</p> <p>22 view, correct, this chapter 149?</p>	<p style="text-align: right;">Page 233</p> <p>1 William Haralson lying about what's going on in this</p> <p>2 e-mail?</p> <p>3 A. That is William Haralson's view.</p> <p>4 Q. Do you think that it's a lie?</p> <p>5 A. I think it's inaccurate.</p> <p>6 Q. Do you think it's a lie?</p> <p>7 A. I think it's inaccurate.</p> <p>8 Q. Do you think intentionally inaccurate?</p> <p>9 A. I think it's intentionally inaccurate.</p> <p>10 Q. So that would be a lie, right?</p> <p>11 A. He believes it to be true.</p> <p>12 Q. So the question -- so the question that --</p> <p>13 so it's an open question whether William Haralson is</p> <p>14 telling the truth or CBP management is telling the</p> <p>15 truth about what's going on in the Hidalgo Port of</p> <p>16 Entry, correct?</p> <p>17 A. He has a different view than the policies</p> <p>18 we have implemented.</p> <p>19 Q. Okay. So looking at this e-mail, what you</p> <p>20 are saying is you are correct that CBP wasn't breaking</p> <p>21 the law, and Mr. Haralson is being intentionally</p> <p>22 incorrect?</p>

<p style="text-align: right;">Page 234</p> <p>1        A. I don't believe Mr. Haralson has enough 2        knowledge to know if we are breaking the law. We are 3        not breaking the law.</p> <p>4        Q. Do you know if William Haralson is actually 5        a CBP employee who worked at the Hidalgo Port of 6        Entry?</p> <p>7        A. I don't know if he is, but our chapter 8        representatives are CBP employees.</p> <p>9        Q. And do you know -- so do you not trust his 10      word on this issue?</p> <p>11      A. I do not trust his word, especially this 12      chapter, which has been problematic throughout my time 13      in my current position.</p> <p>14      Q. So -- and I want to make this crystal clear 15      for Judge Bishan, (ph) the judge looking at this case. 16      Your position that you want to tell Judge Bishan is 17      that William Haralson is lying in this e-mail; is that 18      right?</p> <p>19      MS. SHINNERS: Objection.</p> <p>20      Q. Go ahead.</p> <p>21      A. I do not agree with Mr. Haralson's 22      assessment as to the situation on the ground.</p>	<p style="text-align: right;">Page 236</p> <p>1        on, this chapter will file grievances on.</p> <p>2        Q. Okay. So one of your problems with this 3        chapter is that they speak up and file grievances, 4        right?</p> <p>5        A. No. I think they lack credibility in the 6        complaints that they raise.</p> <p>7        Q. So you just put no stock in this e-mail 8        whatsoever, right?</p> <p>9        A. In this e-mail which I've never seen until 10      today?</p> <p>11      Q. Yeah. Yeah. That's what I'm asking. Can 12      you answer my question, sir?</p> <p>13      A. Let me read the e-mail, sir.</p> <p>14      Q. Sure. Go ahead.</p> <p>15      A. From this e-mail, the third paragraph where 16      he talks about the officers' working conditions out on 17      the middle -- and this would be in the middle of the 18      bridges, I don't disagree with that. Those are issues 19      that we worked on with the national union to bring 20      more safety at the middle of the bridges. But again, 21      the next sentence they are looking for back pay 22      compensation.</p>
<p style="text-align: right;">Page 235</p> <p>1        Q. Were you on the ground on March 15, 2017?</p> <p>2        A. No, I was not.</p> <p>3        Q. When in 2017 did you visit the Hidalgo Port 4        of Entry?</p> <p>5        A. Oh, I don't recall, but I have visited all 6        of our southwest border ports many times.</p> <p>7        Q. Okay. Do you recall whether in March 2017 8        you actually visited the Hidalgo Port of Entry?</p> <p>9        A. I don't recall.</p> <p>10      Q. What specifically about the NTEU Chapter 11      149 is problematic in your view?</p> <p>12      A. In my view, just the history of raising 13      complaints on every issue that is there. The same 14      issues would exist in every other port and no 15      complaints are raised there. They are in my view a 16      very problematic chapter that likes to file grievances 17      on everything.</p> <p>18      Q. So the same issues that are discussed in 19      this e-mail would be present at every other port; is 20      that right?</p> <p>21      A. No. I said the same issues that occur in 22      different ports that no other chapters file grievance</p>	<p style="text-align: right;">Page 237</p> <p>1        Q. And why does that make this e-mail less 2        credible?</p> <p>3        A. Because this chapter is always looking for 4        additional compensation for doing their duties. 5        Throughout the migrant issues, they have always wanted 6        more officers on overtime for what they believe are 7        unsafe working conditions. So I disagree with his 8        first two paragraphs, and his assessment as to the 9        metering and what it's doing to the asylum seekers, 10      but I agree that we have to work with the union on 11      enhancing the working conditions.</p> <p>12      I do not agree with the remedy always being 13      bring more officers on and pay them over time.</p> <p>14      Q. Would it surprise you -- so you disagree 15      that -- sorry. Let me ask a better question.</p> <p>16      You disagree that CBP was breaking federal 17      immigration law, correct?</p> <p>18      A. I disagree.</p> <p>19      Q. And you specifically disagree that CBP was 20      breaking federal immigration law when it implemented 21      the metering policy, correct?</p> <p>22      A. The metering policy was implemented for</p>

<p style="text-align: right;">Page 238</p> <p>1 operational concerns. I do not believe it was 2 breaking federal law.</p> <p>3 Q. Okay. And would it surprise you to know 4 that other CBP officer, front-line officers, also had 5 concerns?</p> <p>6 A. No.</p> <p>7 Q. About breaking -- about the metering policy 8 breaking the law?</p> <p>9 A. No. It would not surprise me.</p> <p>10 Q. In fact you know that other CBP front-line 11 officers had concerns that the metering policy broke 12 the law?</p> <p>13 A. Yes.</p> <p>14 Q. You know that there was a whistleblower in 15 the Tecate Port of Entry who raised concerns about the 16 metering policy breaking the law?</p> <p>17 A. Yes.</p> <p>18 Q. And you know that there was a DHS OIG 19 investigation of that, correct?</p> <p>20 A. Correct.</p> <p>21 Q. And you were contacted as part of that 22 investigation, correct?</p>	<p style="text-align: right;">Page 240</p> <p>1 take responsibility for instances where the metering 2 policy was implemented in ways that broke the law?</p> <p>3 A. Do I take -- my direction was very clear. 4 And I do not take responsibility for the 30,000 5 officers that work under me if they do not follow the 6 guidance of the policies.</p> <p>7 Q. Let me ask you, the concerns that are 8 raised in the first paragraph of this e-mail from 9 William Haralson to David Higgerson, have those 10 concerns been investigated by anyone at CBP, to your 11 knowledge?</p> <p>12 A. I'm not quite sure I even understand what 13 his concerns are. I mean, that we --</p> <p>14 Q. Well, Mr. Haralson is concerned that the 15 metering policy as it was implemented at the Hidalgo 16 Port of Entry broke the law and had a chilling effect 17 on others trying to attempt to enter the U.S.</p> <p>18 Do you know whether the Office of 19 Professional Responsibility, the Office of the 20 Inspector General, or anyone else at DHS or CBP ever 21 investigated the allegation made in the first 22 paragraph of this e-mail?</p>
<p style="text-align: right;">Page 239</p> <p>1 A. I don't believe I was contacted as part of 2 that investigation. I have seen the report.</p> <p>3 Q. And you know that DHS OIG did conclude that 4 part -- that as part of the way the metering policy 5 was implemented at the Tecate Port of Entry, that that 6 implementation broke the law?</p> <p>7 A. That implementation was not directed by 8 management. And the OIG report found it was not the 9 standard protocols for the agency.</p> <p>10 Q. Let me ask you a question. Do you take 11 responsibility for -- ultimate responsibility for what 12 happens at the ports of entry?</p> <p>13 A. Do I take ultimate --</p> <p>14 Q. Yeah. For the actions of your officers?</p> <p>15 A. I am not -- I am the leader of field 16 operations. And when our officers engage in 17 misconduct, they are held accountable for it. As 18 those officers that have improperly returned people 19 back into Mexico after having been on U.S. soil, those 20 cases go to the OIG to OPR for investigation. And if 21 found valid, they are held accountable.</p> <p>22 Q. Do you take responsibility for -- do you</p>	<p style="text-align: right;">Page 241</p> <p>1 A. This specific allegation on Hidalgo, I do 2 not know.</p> <p>3 Q. Do you know whether anybody who -- at CBP 4 has ever disproven the allegations in the first 5 paragraph of this e-mail?</p> <p>6 A. To disprove whether or not our process had 7 a chilling effect on migrants, I don't know that.</p> <p>8 Q. You don't know as you sit here today 9 whether the metering policy had a chilling effect, 10 right?</p> <p>11 A. I do not.</p> <p>12 Q. You don't know as you sit here today 13 whether the metering policy had a deterrent effect, do 14 you?</p> <p>15 A. I know what our statistics show, and that 16 the migrants, 126,000 last year, were not deterred, 17 were not chilled. They came in. They were not 18 discouraged from crossing.</p> <p>19 Q. Isn't it the case that CBP actually 20 investigated whether the metering policy had a 21 chilling -- had a deterring effect?</p> <p>22 A. It's not aware of that.</p>

<p style="text-align: right;">Page 242</p> <p>1 Q. Were you ever read into any sort of effort 2 to do that?</p> <p>3 A. Not that I recall. No.</p> <p>4 Q. Would it surprise you if CBP officers were 5 investigating that issue?</p> <p>6 A. CBP officers.</p> <p>7 Q. Yes.</p> <p>8 A. You mean the Office of Professional 9 Responsibility.</p> <p>10 Q. No, just line -- people --</p> <p>11 A. Line officers?</p> <p>12 Q. -- people in the field in the San Diego 13 field office.</p> <p>14 A. That they were investigating that?</p> <p>15 Q. Yeah.</p> <p>16 A. I'm not aware of that.</p> <p>17 Q. Would it surprise you if they were?</p> <p>18 A. It would, because it's not our role. Our 19 role when we suspect misconduct is to refer that to 20 the OPR and to OIG.</p> <p>21 Q. So that would have been beyond their role 22 to do that sort of investigation in your view?</p>	<p style="text-align: right;">Page 244</p> <p>1 A. Yes.</p> <p>2 Q. And we already talked about Johnny Armijo. 3 He works in the San Diego field office, correct?</p> <p>4 A. Yes.</p> <p>5 Q. And Eddie Arias at the time was with CBP 6 Border Security program manager, TAU, in the San Diego 7 field office, correct?</p> <p>8 A. According to the e-mail.</p> <p>9 Q. And what does TAU stand for?</p> <p>10 A. Tactical Analysis Unit.</p> <p>11 Q. Okay. And what's the Tactical Analysis 12 Unit do?</p> <p>13 A. They are a -- help target and do intel-type 14 research in things.</p> <p>15 Q. And when he's talking about intel, this is 16 developing some of the intel information that would 17 feed into the meeting the SCIF?</p> <p>18 A. No. No. This is more tactical information 19 rather than intel, so identifying, you know, 20 shipments, loads, individuals, those types of things.</p> <p>21 Q. Okay.</p> <p>22 A. It's not classified information like we</p>
<p style="text-align: right;">Page 243</p> <p>1 A. Unless it was one of our integrity officers 2 in the port.</p> <p>3 - - -</p> <p>4 (A document was marked as Deposition 5 Exhibit Number 47.)</p> <p>6 - - -</p> <p>7 BY MR. MEDLOCK:</p> <p>8 Q. Sir, I'm showing you a multi-page document. 9 And I apologize I didn't print the Bates numbers on 10 this, but I'll represent to you begins with the 11 AOL-DEF-00205672 and is designated highly 12 confidential.</p> <p>13 Sir, can you take a moment to review this 14 document and let me know when you are done with it.</p> <p>15 Sir, have you finished reviewing it?</p> <p>16 A. Not yet.</p> <p>17 Q. Okay. Sorry.</p> <p>18 A. Okay.</p> <p>19 Q. All right, sir. I'm focused on the second 20 and third pages of the document. That's a copy of a 21 July 3, 2018 e-mail from Eddy Arias to Johnny Armijo, 22 correct?</p>	<p style="text-align: right;">Page 245</p> <p>1 have at the SCIF.</p> <p>2 Q. Okay. So the e-mail begins: Sir, as 3 requested over the past week, I have worked towards 4 gauging the overall sentiment of subjects detained at 5 the San Ysidro SYS Port of Entry. My goal was to 6 determine what effect, if any, are measures such as, 7 quote, unquote, zero tolerance, end quote, metering, 8 end quote, implemented by U.S./CBP making on subjects 9 attempting entry either illegally or through the 10 credible fear/asylum process.</p> <p>11 Did I read that correctly?</p> <p>12 A. Yes.</p> <p>13 Q. And then in the next paragraph Mr. Arias 14 states that he reviewed 75 detainee I-213 interview 15 narratives, correct?</p> <p>16 A. Correct.</p> <p>17 Q. What's an I-213 interview narrative?</p> <p>18 A. It's one of the immigration forms. It's 19 the Q&amp;A, the question and answer.</p> <p>20 Q. And then he also states that he spoke with 21 deferred inspections officers from the San Ysidro AEU, 22 correct?</p>

<p style="text-align: right;">Page 246</p> <p>1 A. Yes.      2 Q. That's the Admissibility Enforcement Unit      3 in San Ysidro?      4 A. Part of it. Yes.      5 Q. And then he goes on to say, quote, I assess      6 that the Mexican, Honduran, El Salvadorian, and      7 Guatemalan citizen sentiment detained at the POE is      8 unshaken. Detainees did not claim fear of inspection,      9 possible separation of family units, and long wait      10 times in Mexico as deterrent factors.      11 Did I read that correctly?      12 A. Yes.      13 Q. Are you surprised to see that in July 2018      14 officials in the San Diego field office were      15 investigating whether there -- whether the metering      16 policy had a deterrent factor?      17 A. Well, they are also talking about zero      18 tolerance, which in July 2018 was in the high point of      19 family separation activities that were taking place.      20 Q. I get that, but they are also talking about      21 metering.      22 A. They are.</p>	<p style="text-align: right;">Page 248</p> <p>1 (A document was marked as Deposition      2 Exhibit Number 48.)      3 - - -      4 BY MR. MEDLOCK:      5 Q. And while you look at 48, sir, I just want      6 to explain a couple things to you. Have you ever      7 marked up a PDF before, sir?      8 A. If I've marked up a PDF?      9 Q. Right. Ever made comments on a PDF?      10 A. Ever?      11 Q. Yeah.      12 A. Like in the computer, like adding a      13 footnote --      14 Q. Yeah, in the course of your work?      15 A. I guess I have.      16 Q. You see how there's in the -- in Exhibit 47      17 there's some highlighting and there's some comment      18 bubbles underneath some of the paragraphs?      19 A. Yes.      20 Q. All right. And there's actually sort of a      21 comment bubble right off of the phrase, the phrase      22 deterrent factor is underlined, and there's a comment</p>
<p style="text-align: right;">Page 247</p> <p>1 Q. And they are also talking about whether      2 long wait times in Mexico are a deterrent factor,      3 right?      4 A. Correct.      5 Q. Does that surprise you?      6 A. It does surprise me.      7 Q. And you weren't read into that effort, were      8 your?      9 A. No, not that I recall. No.      10 Q. Did anybody ever report up to you about      11 anything relating to this apparent study done by the      12 TAU?      13 A. No. This is the first time that I recall      14 seeing this.      15 Q. Okay. Do you know Elizabeth Kingma is?      16 A. No.      17 Q. I'll represent to you that Elizabeth Kingma      18 is a investigator with the Office of Inspector General      19 at the Department of Homeland Security. Okay?      20 A. Okay.      21 Q. All right. Mark the next exhibit.      22 - - -</p>	<p style="text-align: right;">Page 249</p> <p>1 bubble next to it?      2 A. Yes. Okay.      3 Q. Okay. So I'm back on 48, and I'll      4 represent to you this is the metadata taken from this      5 document, AOL-DEF-00205672. Okay. And I am on page 3      6 of the metadata sheet in front of you. Do you see      7 that?      8 A. Yes.      9 Q. Page 3?      10 A. Page 3.      11 Q. And confusingly, halfway -- more than      12 halfway down the bottom of the page it says, Page 2 of      13 3. Do you see that?      14 A. Yes.      15 Q. Okay. And there's something that says      16 "annotations," correct?      17 A. Yes.      18 Q. And it says "Author, Kingma, E," do you see      19 that?      20 A. Yes.      21 Q. And it says created on, 3/31/2019, 3:56      22 p.m.?</p>

<p style="text-align: right;">Page 250</p> <p>1 A. Okay.      2 Q. Then it says "contents." Do you see that?      3 A. Yes.      4 Q. And that section reads, Deterrents, hmm.      5 H-M-M. Could CBP have several goals for queue      6 management? Slowing intake to reasonable levels and      7 deterrents. Did I read that correctly?      8 A. Yes.      9 Q. And if -- so it appears that someone named      10 Elizabeth Kingma marked up this e-mail and asked      11 whether one of the goals of queue management was      12 deterrents, correct?      13 A. Correct.      14 Q. And that occurred on March 31, 2019,      15 correct?      16 A. Correct.      17 Q. So, and were you made aware at all that the      18 Office of Inspector General at DHS had questions about      19 whether one of the motivations for the queue      20 management or metering policy was deterrents?      21 MS. SHINNERS: Objection. This is quite      22 clearly an OIG document. I just want to make --</p>	<p style="text-align: right;">Page 252</p> <p>1 MS. SHINNERS: Objection. Foundation,      2 knowledge.      3 Q. I'm asking whether he know.      4 A. I don't know. I don't know who Eddy Arias      5 is. I don't know the reason to start that inquiry. I      6 don't know.      7 Q. And he was reporting to Johnny Armijo,      8 correct?      9 A. Correct.      10 Q. You do know Johnny Armijo?      11 A. I do know Johnny Armijo.      12 Q. Do you trust Johnny Armijo's work?      13 A. Yes.      14 Q. Do you think he's a good CBP officer?      15 A. I do.      16 Q. And do you -- and Johnny Armijo just never      17 brought this up with you, correct?      18 A. He is several steps down below my chain of      19 command. He's never brought this up to me.      20 Q. Do you know for what purpose Mr. Arias and      21 Mr. Armijo exchanged this e-mail about whether long      22 wait times in Mexico were a deterrent factor?</p>
<p style="text-align: right;">Page 251</p> <p>1 MR. MEDLOCK: I'm asking whether he's aware      2 of that.      3 A. I don't recall being aware of anything like      4 that with OIG.      5 BY MR. MEDLOCK:      6 Q. Did anyone in your reporting or command      7 structure ever tell you whether -- ever tell you that      8 there were questions being asked about whether one of      9 the purposes of the queue management or metering      10 policy was deterrents?      11 A. Well, you showed me an e-mail earlier from      12 one of my staff that said deterrents was named.      13 Q. Right.      14 A. So I can't -- I can't say for certain that      15 I haven't received some documents for folks that have      16 expressed concern. But I know why the policy was set      17 up, and deterrents was not why the policy was set up.      18 Q. Right. So you -- but can you just help me      19 out here and explain if deterrents isn't one of the      20 reasons why the policy is set up, why is Eddie Arias      21 going through the AEU at San Ysidro and asking people      22 whether they were deterred by long waits in Mexico?</p>	<p style="text-align: right;">Page 253</p> <p>1 MS. SHINNERS: Objection to the      2 characterization of the document.      3 A. I do not know. I don't know.      4 Q. So as you sit here today, this is the first      5 time you have ever seen this e-mail, correct?      6 A. Correct.      7 Q. And you don't have an explanation for why      8 the TAU and the San Diego field office was looking at      9 whether the metering policy had a deterrent factor do      10 you? You don't have an explanation for that?      11 A. No.      12 Q. And you don't have an explanation for why      13 someone named Elizabeth Kingma in March 31, 2019 was      14 asking whether the queue management policy, one of the      15 purposes of the queue management policy was      16 deterrents, do you?      17 A. No. I mean, lower-level employees      18 throughout the agency, throughout OIG have their      19 views. My policy memo from April of 2018 is very      20 clear.      21 Q. Okay. So let me get this straight. You      22 believe your policy memo is clear, correct?</p>

<p style="text-align: right;">Page 254</p> <p>1 A. I do.</p> <p>2 Q. But you received e-mails saying -- that</p> <p>3 indicated to you that some people that purported to</p> <p>4 you thought that the policy had a deterrent effect,</p> <p>5 correct? We looked at that e-mail earlier.</p> <p>6 A. Right. From that e-mail, I recall that.</p> <p>7 Q. And you were getting questions from CRCL</p> <p>8 about whether one of the purposes for the metering</p> <p>9 policy was deterrents, correct?</p> <p>10 A. CRCL was investigating that. I was not</p> <p>11 getting questions from that.</p> <p>12 Q. There was an investigation. You knew that?</p> <p>13 A. From CR. Right.</p> <p>14 Q. And you also knew that there was a DHS OIG</p> <p>15 investigation about the metering policy in 2018, 2019,</p> <p>16 correct?</p> <p>17 A. I'm aware there was a review about how the</p> <p>18 policy was implemented and the misconduct of some</p> <p>19 officers, not if it had a deterrent effect.</p> <p>20 Q. And you now know there was also an e-mail</p> <p>21 sent in 2017 by someone with the NTEU chapter claiming</p> <p>22 that the metering policy broke the law, correct?</p>	<p style="text-align: right;">Page 256</p> <p>1 me know when you have finished doing so.</p> <p>2 A. Okay.</p> <p>3 Q. All right, sir. You've seen a copy of this</p> <p>4 e-mail before?</p> <p>5 A. I believe I have.</p> <p>6 Q. And when I say "this e-mail" I'm referring</p> <p>7 to the March 19, 2019 e-mail from David Atkinson to</p> <p>8 Kevin McAleenan with William Haralson and Romualdo</p> <p>9 Iglesias, Jr. copied. Do you see that e-mail, sir?</p> <p>10 A. Yes, sir.</p> <p>11 Q. And the subject line of that e-mail is</p> <p>12 safety alert, slash, rule clarification?</p> <p>13 A. Correct.</p> <p>14 Q. And you would have -- you received that</p> <p>15 e-mail in the course of your duties at CBP, correct?</p> <p>16 A. I believe either I received this from</p> <p>17 Mr. McAleenan or I may have received it from the</p> <p>18 national NTEU.</p> <p>19 Q. Okay. But either way, you received it in</p> <p>20 the course of your duties?</p> <p>21 A. I do recall seeing this. Yes.</p> <p>22 Q. Okay. And you would have received it on or</p>
<p style="text-align: right;">Page 255</p> <p>1 A. In their view, yes.</p> <p>2 Q. And you also know that somebody named</p> <p>3 Elizabeth Kingma was raising questions about the</p> <p>4 purpose of the --</p> <p>5 A. Based on the documents you just provided</p> <p>6 me, yes.</p> <p>7 Q. And your -- but despite all of that, you</p> <p>8 believe your policy was crystal clear?</p> <p>9 A. I do.</p> <p>10 Q. Okay. Got it. All right. Let's go to the</p> <p>11 next document.</p> <p>12 Are you good? Do you need a break?</p> <p>13 A. No, I'm good.</p> <p>14 - - -</p> <p>15 (A document was marked as Deposition</p> <p>16 Exhibit Number 49.)</p> <p>17 - - -</p> <p>18 BY MR. MEDLOCK:</p> <p>19 Q. Sir, I've marked as Exhibit 49 a multi-page</p> <p>20 e-mail attachment that begins with NTEU-000110 and</p> <p>21 goes all the way to NTEU-000126.</p> <p>22 Take a moment to review the document. Let</p>	<p style="text-align: right;">Page 257</p> <p>1 around March 19, 2019?</p> <p>2 A. Generally speaking.</p> <p>3 Q. Give or take?</p> <p>4 A. Give or take. Yeah.</p> <p>5 Q. And at the time you received the e-mail,</p> <p>6 you would have read it and understood it, correct?</p> <p>7 A. Yes.</p> <p>8 Q. And from looking at the e-mail and</p> <p>9 attachment, the e-mail attachment appears to be true</p> <p>10 and correct; is that right?</p> <p>11 A. Best as I can recall. Yes.</p> <p>12 Q. Okay. Do you think David Atkinson is a</p> <p>13 problem employee?</p> <p>14 A. He is the same chapter as the last e-mail</p> <p>15 you showed me. Yes.</p> <p>16 Q. Do you think he's a liar?</p> <p>17 A. I question his assessments. Yes. I think</p> <p>18 he misleads.</p> <p>19 Q. Question his veracity?</p> <p>20 A. Define veracity.</p> <p>21 Q. It's another fancy -- it's a 25 cent way of</p> <p>22 asking do you think he's a liar?</p>

<p style="text-align: right;">Page 258</p> <p>1 A. I think he misleads. Yes.</p> <p>2 Q. So, I mean, we looked at the CBP ethics</p> <p>3 policy earlier. How many times has -- it's a</p> <p>4 violation of the ethics policy to lie, correct?</p> <p>5 A. Correct.</p> <p>6 Q. And mislead, correct?</p> <p>7 A. Correct.</p> <p>8 Q. Do you think he's an unethical officer?</p> <p>9 A. Do I think he's an unethical officer.</p> <p>10 Q. Yes.</p> <p>11 A. Yes.</p> <p>12 Q. How many times to your knowledge has David</p> <p>13 Atkinson been reprimanded for violating the CBP ethics</p> <p>14 policy?</p> <p>15 A. I don't have that data.</p> <p>16 Q. Would it -- do you have any information as</p> <p>17 you sit here today that he's ever been reprimanded?</p> <p>18 A. I don't. I know he's received cease and</p> <p>19 desist orders on things.</p> <p>20 Q. Did he receive a cease and desist order for</p> <p>21 this e-mail?</p> <p>22 A. Not that I'm aware of.</p>	<p style="text-align: right;">Page 260</p> <p>1 United States from that detention site on the Mexican</p> <p>2 side which is under the control and direction of CBP</p> <p>3 officers on the U.S. side.</p> <p>4 Did I read that correctly?</p> <p>5 A. Yes.</p> <p>6 Q. Do you agree with anything in that</p> <p>7 paragraph?</p> <p>8 A. Do I agree with anything in this paragraph.</p> <p>9 Q. Yeah.</p> <p>10 A. I believe the Mexican officials did create</p> <p>11 a list on the other side of Hidalgo.</p> <p>12 Q. So that at least is accurate as far as</p> <p>13 you --</p> <p>14 A. Right. I mean, they did request a written</p> <p>15 order on our policy. That's accurate.</p> <p>16 Q. Anything else?</p> <p>17 A. Well, just again when he says, Return</p> <p>18 individuals who enter the U.S., if again they have</p> <p>19 crossed over into the U.S. they are not to be</p> <p>20 returned; I don't know if he means actually entered or</p> <p>21 just at the limit line. I don't know where he's going</p> <p>22 with that.</p>
<p style="text-align: right;">Page 259</p> <p>1 Q. When you say he's received cease and desist</p> <p>2 orders from a court or from officials at CBP?</p> <p>3 A. From his leadership at CBP.</p> <p>4 Q. When you say cease and desist order, is it</p> <p>5 the leadership asked him to stop doing certain things?</p> <p>6 A. Certain things, yes, in terms of his</p> <p>7 conduct towards other employees</p> <p>8 Q. Okay. Did the leadership at CBP ever ask</p> <p>9 Mr. Atkinson to stop making complaints?</p> <p>10 A. No. No. The cease and desist was in his</p> <p>11 relationship to how he was engaging with other</p> <p>12 employee.</p> <p>13 Q. All right. Let's look at the e-mail that</p> <p>14 Mr. Atkinson sent to Mr. McAlenan. It reads, the</p> <p>15 first paragraph, quote, First, the port of Hidalgo,</p> <p>16 Texas employees would like a written order provided to</p> <p>17 them that mirrors their instructions to return</p> <p>18 individuals who enter the U.S. And request asylum</p> <p>19 back to Mexico without appointment for a future</p> <p>20 appointment. The Agency is allowing the Mexican</p> <p>21 officials to create a list and detention area mid</p> <p>22 bridge to facilitate who would be next to enter the</p>	<p style="text-align: right;">Page 261</p> <p>1 Q. Okay. so you may disagree with that, you</p> <p>2 may not. You just don't understand his phrasing; is</p> <p>3 that right?</p> <p>4 A. I know that, again, it's against policy to</p> <p>5 return folks who have already crossed into the U.S. I</p> <p>6 don't know if that's what he is meaning.</p> <p>7 Q. And Mr. Atkinson states that there were</p> <p>8 instructions to return individuals who enter the U.S.</p> <p>9 And request asylum back to Mexico, correct?</p> <p>10 A. That's what his e-mail says.</p> <p>11 Q. If that occurred, that was a violation of</p> <p>12 your metering policy, correct?</p> <p>13 A. If they had already stepped foot in the</p> <p>14 United States. If they were still at the limit line</p> <p>15 and we were beyond capacity, to tell them at that</p> <p>16 point to return to Mexico would not violate the</p> <p>17 metering policy.</p> <p>18 Q. Right. In fact that's what the policy sort</p> <p>19 of describes, right?</p> <p>20 A. That's what it describes.</p> <p>21 Q. So you don't -- we can go back to this</p> <p>22 e-mail for a second. I just want to make sure I</p>

<p style="text-align: right;">Page 262</p> <p>1 understand it. We don't dispute a couple facts here.      2 We don't -- you don't dispute that officers      3 are placed -- have been placed at the limit line of      4 ports of entry on the southwestern border, right?      5 A. No.      6 Q. You don't dispute that those officers have      7 been instructed, per your memorandum, to state that      8 the port is at capacity and that people should come      9 back at a later time, correct?      10 A. Correct.      11 Q. And you don't dispute that individuals who      12 come to the actual boundary between the U.S. And      13 Mexico are told that by CBP officers, and as a result      14 return to Mexico, correct?      15 A. At the limit line, if we are beyond      16 capacity, they are told to return to Mexico, and we      17 will process them when we have capacity, if that's      18 what you are asking.      19 Q. Right. There's no dispute about those      20 facts, right?      21 A. No, but again, at the limit line.      22 Q. Right.</p>	<p style="text-align: right;">Page 264</p> <p>1 the phrasing of what Mr. Atkinson is actually saying      2 in this first paragraph. It just depends on what he      3 means by entering, correct?      4 A. Correct.      5 Q. But if he is saying that people actually      6 step foot on U.S. soil, you would dispute that? You      7 would dispute that that was actually occurring at the      8 Hidalgo Port of Entry?      9 A. I can't speak to what happened on March 19      10 at the Hidalgo Port of Entry.      11 Q. Okay.      12 A. I'm saying is if they step foot at any port      13 into the United States, they are to be brought in and      14 be processed.      15 Q. Okay. And one of the reasons that Mr.      16 Atkinson was asking for a written order was he      17 apparently believed that your April 2018 memorandum      18 was unclear?      19 MS. SHINNERS: Objection. Calls for      20 speculation. You can answer.      21 A. I don't know why he wanted more than what      22 we have already put out.</p>
<p style="text-align: right;">Page 263</p> <p>1 A. If they have stepped into the U.S., that's      2 different.      3 Q. Right. Right. So if somebody is at the      4 limit line but on Mexican soil --      5 A. Correct.      6 Q. -- CBP officers are instructed to engage in      7 metering per your policy which would include telling      8 people that the port is at capacity and that they      9 should return at a later date, correct?      10 A. That's right.      11 Q. Okay. I just want to make sure that we      12 have that correct. Okay. Let's go back to the memo,      13 to the e-mail for a second.      14 If people actually stepped foot on -- if      15 asylum seekers actually stepped foot on U.S. soil and      16 were returned back to Mexico, you would agree with me      17 that that violates your policy, right?      18 A. The policy says that.      19 Q. And to your understanding it would also      20 violate the law, right?      21 A. To my understanding, yes.      22 Q. Okay. And so you may or may not dispute</p>	<p style="text-align: right;">Page 265</p> <p>1 Q. Okay. Let's move to the page that ends in      2 115. That is a letter that appears to begin with a      3 "To Whom It May Concern," correct?      4 A. Correct.      5 Q. It's dated March 6, 2019?      6 A. Yes.      7 Q. And there's heading at the top that says,      8 CBP Officers, U.S. Customs and Border Protection, U.S.      9 Port of Hidalgo, Texas. Do you see that?      10 A. Yes.      11 Q. You reviewed this attachment at the time      12 that you also reviewed the e-mail that was sent to Mr.      13 McAleenan, correct?      14 A. I believe so.      15 Q. Okay. And the "To Whom It May Concern"      16 letter reads, "We CBP officers assigned the port of      17 Hidalgo, Texas, have been ordered by CBP supervisors      18 to inspect persons seeking, slash, requesting asylum      19 status near the middle of the United States-Mexico      20 bridge in Hidalgo, Texas, on the U.S. side."      21 Did I read that correctly?      22 A. I'm sorry. On the U.S. side. Yes.</p>

<p style="text-align: right;">Page 266</p> <p>1 Q. And that's a correct statement of the 2 metering policy, correct? Of how it's supposed to 3 operate?</p> <p>4 A. Operate at the limit line which is 5 generally in the middle of the bridges.</p> <p>6 Q. Okay. And the next sentence "reads, We are 7 posted mere feet into the U.S. from the U.S.-Mexico 8 border line, and are intercepting and immediately 9 preventing asylees who request asylum entering the 10 United States.</p> <p>11 Did I read that correctly?</p> <p>12 A. Yes.</p> <p>13 Q. Is that how the metering policy is supposed 14 to work?</p> <p>15 A. Immediately preventing asylees.</p> <p>16 Q. Yes.</p> <p>17 A. If we were at capacity, we are to direct 18 the asylees to go back to Mexico, remain in the 19 shelters until we have capacity.</p> <p>20 Q. So it may not be phrased the way that you 21 want but --</p> <p>22 A. Well, I would not use the word preventing.</p>	<p style="text-align: right;">Page 268</p> <p>1 officers believed that immediately preventing asylees 2 from entering the U.S. was a purpose of the metering 3 policy, correct?</p> <p>4 A. I don't know if that's -- they believe that 5 was the purpose.</p> <p>6 Q. But anyone who read your metering policy 7 should not have come away with the impression of it 8 was immediately preventing asylees from entering the 9 U.S., right?</p> <p>10 MS. SHINNERS: Objection.</p> <p>11 Q. You never wanted to convey that sentiment; 12 is that right?</p> <p>13 A. Metering has never been designed to be a 14 deterrent.</p> <p>15 Q. Can you explain to me why these officers 16 who are implementing the metering policy at the 17 Hidalgo point of entry believe that it is being used 18 to intercept and immediately prevent asylees who 19 request asylum from entering the U.S.?</p> <p>20 A. I don't believe this is an accurate 21 reflection of the policy or what's taking place.</p> <p>22 Q. Do you think these officers are being</p>
<p style="text-align: right;">Page 267</p> <p>1 Q. Okay. But that's just a word choice issue, 2 correct?</p> <p>3 A. But I think preventing gives the wrong 4 connotation.</p> <p>5 Q. Right. It does, doesn't it?</p> <p>6 A. It does.</p> <p>7 Q. Because you wouldn't view immediately 8 preventing asylees as the purpose of your metering 9 policy, correct?</p> <p>10 A. I would not.</p> <p>11 Q. But the officers who signed this letter 12 appeared to believe that that was a purpose of the 13 metering policy?</p> <p>14 A. The officers who signed this letter were 15 more concerned with the safety of being now posted mid 16 bridge.</p> <p>17 Q. Not my question.</p> <p>18 A. Well --</p> <p>19 Q. My question is these officers used the 20 phrase "immediately preventing asylees," correct?</p> <p>21 A. That's the term they used.</p> <p>22 Q. And they have -- it appears that these</p>	<p style="text-align: right;">Page 269</p> <p>1 inaccurate in their statements?</p> <p>2 A. I think these officers signed a petition 3 provided to them by their union chapter president.</p> <p>4 Q. Do you think that these officers were 5 forced to sign this?</p> <p>6 A. No.</p> <p>7 Q. Do you think that these officers have free 8 will?</p> <p>9 A. Yes.</p> <p>10 Q. Do you think these officers have the 11 ability to decide that they didn't agree with this and 12 didn't want to sign it?</p> <p>13 A. Yes.</p> <p>14 Q. Do you think that the officers who signed 15 this letter agreed with the statements in it?</p> <p>16 A. I believe so.</p> <p>17 Q. Can you explain to me why the 187 officers 18 who signed this letter had the impression that the 19 metering policy was designed to immediately prevent 20 asylees from entering the U.S.?</p> <p>21 MS. SHINNERS: Objection, foundation.</p> <p>22 Q. So how many -- will you take my word for it</p>

<p style="text-align: right;">Page 270</p> <p>1    that 187 officers signed this?</p> <p>2    A.   Okay.</p> <p>3    Q.   I counted it, but do you have any reason to</p> <p>4    dispute that?</p> <p>5    A.   No.</p> <p>6    Q.   And have you spoken to any of these</p> <p>7    officers?</p> <p>8    A.   No.</p> <p>9    Q.   Have you attempted to ask them what -- why</p> <p>10   they would come away with the impression that</p> <p>11   immediately -- that the metering policy was designed</p> <p>12   to immediately prevent asylees from requesting asylum</p> <p>13   in the U.S.?</p> <p>14   A.   I have not spoken with these officers.</p> <p>15   Q.   So you don't know where they got this</p> <p>16   phrase "immediately preventing asylees who request</p> <p>17   asylum from entering the U.S."?</p> <p>18   A.   I know the policy doesn't say that.</p> <p>19   Q.   And you can't explain why 187 officers</p> <p>20   would sign a letter indicating that that's how the</p> <p>21   policy was being implemented?</p> <p>22         MS. SHINNERS: Same objection. Foundation.</p>	<p style="text-align: right;">Page 272</p> <p>1    A.   Yes, it is.</p> <p>2    Q.   -- at the --</p> <p>3    A.   Yes, it is.</p> <p>4    Q.   And it's something you want to try to</p> <p>5    guarantee as best you can --</p> <p>6    A.   Yes.</p> <p>7    Q.   -- correct? So isn't it true that when the</p> <p>8    metering policy was rolled out, there were concerns</p> <p>9    about office safety at multiple ports of entry?</p> <p>10   A.   There were.</p> <p>11   Q.   There were concerns at the Tecate Port of</p> <p>12   Entry, correct?</p> <p>13   A.   I don't recall Tecate, but there were</p> <p>14   concerns at multiple ports expressed.</p> <p>15   Q.   And there certainly were concerns at</p> <p>16   Hidalgo, correct?</p> <p>17   A.   At the -- particularly in the Laredo area</p> <p>18   where the bridges are long. Yes.</p> <p>19   Q.   Was the metering policy rolled out before</p> <p>20   the officer safety aspect of putting people at mid</p> <p>21   bridge could be fully considered?</p> <p>22   A.   No. Metering policy, again, began in 2016.</p>
<p style="text-align: right;">Page 271</p> <p>1    A.   I don't know why they would sign this memo.</p> <p>2    Q.   So --</p> <p>3    A.   But I know from the e-mail that is attached</p> <p>4    to this, there are other issues at play here besides</p> <p>5    simply the metering.</p> <p>6    Q.   Do you think these officers are just out</p> <p>7    to get some back pay, these 187 officers?</p> <p>8    A.   I think these officers don't like being</p> <p>9    stationed mid bridge. I think they feel that more</p> <p>10   needs to be done mid bridge. And I also do believe</p> <p>11   they want more officers on overtime at mid bridge.</p> <p>12   Q.   So you think these 187 officers are just</p> <p>13   out for some more overtime?</p> <p>14   A.   I think there's a lot of reasons behind why</p> <p>15   they are unhappy with being stationed mid bridge.</p> <p>16   Q.   Do you think these 187 officers have</p> <p>17   legitimate concerns about their safety?</p> <p>18   A.   Legitimate concerns about their safety mid</p> <p>19   bridge, yes. And we have worked with national union</p> <p>20   and we've worked to address the safety issues mid</p> <p>21   bridge.</p> <p>22   Q.   Is officer safety a priority for you --</p>	<p style="text-align: right;">Page 273</p> <p>1    It was when we started stationing officers at the</p> <p>2    limit line. That is what caused some greater concern</p> <p>3    for officer safety.</p> <p>4    Q.   So you didn't know about the officer safety</p> <p>5    concerns until officers were put at the limit line,</p> <p>6    right?</p> <p>7    A.   Until officers started raising their</p> <p>8    concerns, yes.</p> <p>9    Q.   If a -- if you learned the metering policy</p> <p>10   was causing concerns about officer safety, and officer</p> <p>11   safety was a paramount concern for yourself, why not</p> <p>12   pull back the policy and say we are going to work it</p> <p>13   out so that we can do this safely, and then we'll roll</p> <p>14   it out again?</p> <p>15   A.   Because we addressed the physical safety</p> <p>16   aspects of what their concerns were. And working with</p> <p>17   the national chapter at all of the crossings, we</p> <p>18   addressed, location by location, safety aspects to</p> <p>19   address their concerns. We built protection booths,</p> <p>20   if you will. We had vehicles out there.</p> <p>21   We have the heaters, the lighting. All of</p> <p>22   the efforts that are needed to enhance officer safety</p>

<p style="text-align: right;">Page 274</p> <p>1 at the limit line was the direction we went. We did 2 not pull back the policy. We enhanced the officer 3 safety.</p> <p>4 Q. That happened after the metering policy was 5 rolled out, correct?</p> <p>6 A. The metering policy again started in 2016. 7 These concerns came up when we started posting 8 officers mid bridge. And we have worked to address 9 those issues since that time.</p> <p>10 Q. If you are going to roll out a new policy, 11 why not look at officer safety first and then 12 implement the policy? Why do it backwards?</p> <p>13 A. We were facing a crisis with the level of 14 migrants that were coming in. We were overwhelmed. 15 What we did in 2016 also created officer safety issues 16 when we brought in as many migrants as we physically 17 could, when we converted conference rooms to provide 18 them space, when we allowed them to stay outside of 19 the doors of the offices and defecate all over the 20 property. That was creating officer safety issues 21 too. So we had to take actions then.</p> <p>22 And we were not going to repeat the</p>	<p style="text-align: right;">Page 276</p> <p>1 appears on the fourth page of the e-mail with the what 2 appears to be sort of grainy picture of a secondary 3 inspection area. Do you see that, sir?</p> <p>4 A. Okay.</p> <p>5 Q. Does that -- is that a secondary inspection 6 area at Hidalgo, do you know?</p> <p>7 A. I mean it -- it could be. It could be the 8 permit area.</p> <p>9 Q. Okay.</p> <p>10 A. I mean, it could be.</p> <p>11 Q. You are not clear as you look -- I gather 12 it's a bad photo, but you can't tell where it's taken?</p> <p>13 A. I can't tell. No, sir.</p> <p>14 Q. Okay. And below that it says, Chairs 15 reduced to minimize the amount of persons held in the 16 seating area, leaving a huge blank space. 17 Did I read that correctly?</p> <p>18 A. Okay.</p> <p>19 Q. Are you aware of any effort to reduce the 20 number of chairs at the Hidalgo Port of Entry to 21 reduce the throughput of the port?</p> <p>22 A. No. I'm aware we changed some of the</p>
<p style="text-align: right;">Page 275</p> <p>1 conditions that existed in 2016 when the migrants 2 started surging again in 2018. So there are no easy 3 answers when you implement these policies in the 4 ports.</p> <p>5 Q. There are no easy answers but you still 6 have to follow the law, right?</p> <p>7 A. And we do follow the law.</p> <p>8 MS. SHINNERS: I think it's time for a 9 break.</p> <p>10 MR. MEDLOCK: Do you need a break, sir?</p> <p>11 THE WITNESS: I do need a break.</p> <p>12 MR. MEDLOCK: Okay.</p> <p>13 - - -</p> <p>14 (Recessed at 3:11 p.m.)</p> <p>15 (Reconvened at 3:25 p.m.)</p> <p>16 - - -</p> <p>17 BY MR. MEDLOCK:</p> <p>18 Q. All right, sir. You still have --</p> <p>19 A. Yes.</p> <p>20 Q. -- the current exhibit in front of you, 21 sir. I want to direct your attention to the e-mail 22 from David Atkinson, and specifically the picture that</p>	<p style="text-align: right;">Page 277</p> <p>1 secondary areas because we had absconders. And we 2 took measures such as moving chairs, reducing chairs, 3 adding specialized locks to the doors to reduce the 4 absconders.</p> <p>5 Q. Okay. So there was a time period in which 6 the number of chairs in the port facility were 7 reduced; is that right?</p> <p>8 A. I remember there was issues with absconders 9 at Hidalgo. And port management took measures to 10 address that. I don't know if that included removing 11 chairs or what.</p> <p>12 Q. My question was -- I think you just said 13 there was an absconder issue and there were --</p> <p>14 A. Right. And they reconfigured areas.</p> <p>15 Q. They reconfigured the space. And as part 16 of the reconfigures of space is that chairs were 17 removed from them; is that right?</p> <p>18 A. Well, they reconfigured space; they added 19 additional security measures to prevent the 20 absconders. I can't attest whether or not they 21 removed chairs as part of that reconfiguration.</p> <p>22 Q. So you can't tell me one way or the other</p>

<p style="text-align: right;">Page 278</p> <p>1    whether this sentence about removing chairs is 2    accurate? 3       A. No. 4       Q. Okay. Do you ever investigate whether that 5    was accurate? 6       A. No. I did not investigate whether chairs 7    were removed. 8       Q. Did you ever ask anyone to do so? 9       A. No. 10     Q. Did you think it was part of your duty as 11   the EAC and oversees more than 20,000 law enforcement 12   officers to determine whether this statement was true? 13     A. No. This would be a relatively local 14   matter if somebody removed chairs from a holding area. 15     Q. And so it just didn't have any significance 16   in your mind? 17     A. No. 18     Q. It was a local issue? 19     A. It did not rise up to my level to 20   investigate whether some chairs were removed. 21     Q. So you just didn't review determining 22   whether this was accurate or not as your</p>	<p style="text-align: right;">Page 280</p> <p>1    Q. Do you know whether Commissioner McAleenan 2    did? 3       A. I don't know if he did. 4       Q. Do you know whether Commissioner McAleenan 5    ever asked whether the number of chairs had been 6    reduced? 7       A. I find it highly unlikely that at the 8    commissioner's level he would be asking about the 9    number of chairs in a waiting area. 10     Q. Did he ever staff anyone to do that 11   investigation? 12     A. Not to my knowledge. 13     Q. Did you? 14     A. No. I mean, again, when we have 15   allegations of alleged misconduct, I would refer that 16   to the JIC. With this specific instance where the 17   chairs were removed, or why there was no officers from 18   10:00 to 11:00 in this particular work unit, I would 19   not investigate that. 20     Q. Would you refer this issue to the JIC? 21     A. No. 22     Q. Did you do that?</p>
<p style="text-align: right;">Page 279</p> <p>1    responsibility? 2       A. I did not. No. 3       Q. And then the next page, page 5, there's a 4    picture that appears to be of some workstations. Do 5    you see that? 6       A. Yes. 7       Q. And then there's -- it look likes there's 8    no one sitting at any of those workstations, correct? 9       A. That's correct. 10     Q. And beneath that says, No officer 11   stationed to process work at 10:00 to 11:00 p.m. And 12   only for employees to process family unit credible 13   fear cases. Did I read that correctly? 14     A. Yes. 15     Q. Did you do anything to investigate whether 16   this picture of and the sentence below it are 17   accurate? 18     A. No. I don't investigate staffing levels on 19   a particular shift. 20     Q. Did you ask anyone to look into whether 21   this photo was accurate? 22     A. No.</p>	<p style="text-align: right;">Page 281</p> <p>1    A. No, I did not. 2       Q. Do you know whether Commissioner McAleenan 3    did? 4       A. I do not. 5       Q. Do you know if anyone referred this issue 6    to the Joint Intake Center, or JIC? 7       A. I don't know if anything was referred. I 8    don't know if any local efforts were taken. 9       Q. Did you ever talk just informally to David 10   Higgerson to determine whether these photos and the 11   statements below them were true? 12     A. I did not speak to David Higgerson about 13   the staffing from 10:00 to 11:00, or the number of 14   chairs. I did speak to David Higgerson about the 15   overall safety issues at the limit line. 16     Q. So the allegations about no officers being 17   stationed at the workstation, and the number of chairs 18   being reduced are, in your view, local issues that 19   don't raise to your level? 20     A. Yes. 21     Q. And you don't take responsibility for 22   determining whether these statements are true or</p>

<p style="text-align: right;">Page 282</p> <p>1 accurate, correct?</p> <p>2 A. In this form, correct.</p> <p>3 Q. All right. Now back on page 1 of</p> <p>4 Mr. Atkinsons' e-mail, and I'm looking at the second</p> <p>5 paragraph. It reads, "The employees would like you to</p> <p>6 provide them the proper authority and sections of law</p> <p>7 that allows them to detain these asylum seekers on the</p> <p>8 Mexican side and prevent them from entering the U.S.</p> <p>9 after presenting themselves for inspection and</p> <p>10 requesting asylum. The employees would like something</p> <p>11 in writing to protect their ordered activities as the</p> <p>12 Agency is claiming publicly that they are not</p> <p>13 conducting these activities when they really are."</p> <p>14 Did I read that correctly?</p> <p>15 A. You read it correctly.</p> <p>16 Q. Do you have any understanding of what the</p> <p>17 phrase, "the Agency is claiming publicly they are not</p> <p>18 conducting these activities when they really are"</p> <p>19 means?</p> <p>20 A. No.</p> <p>21 Q. Do you believe that statement is true?</p> <p>22 A. I don't know what he means by that</p>	<p style="text-align: right;">Page 284</p> <p>1 know, verbal orders and verbal musters that can come</p> <p>2 down?</p> <p>3 A. Yes.</p> <p>4 Q. Do you know whether there was ever a verbal</p> <p>5 order or verbal muster to turn back asylum seekers at</p> <p>6 the Hidalgo Port of Entry?</p> <p>7 A. No. But if there was, it would be against</p> <p>8 policy.</p> <p>9 Q. Did you ever ask anyone to investigate</p> <p>10 whether there was such a verbal order?</p> <p>11 A. No.</p> <p>12 Q. So as you sit here today, you don't know</p> <p>13 one way or the other whether that verbal order was</p> <p>14 ever given?</p> <p>15 A. I can't say what was said. I know what the</p> <p>16 official policies that's been distributed.</p> <p>17 Q. Okay.</p> <p>18 A. There's other statements in here, ask about</p> <p>19 detaining asylum seekers on the Mexican side. I know</p> <p>20 that to be false. Our officers do not cross into</p> <p>21 Mexico to detain Mexicans on the Mexican side. We do</p> <p>22 not cross that limit line.</p>
<p style="text-align: right;">Page 283</p> <p>1 statement.</p> <p>2 Q. Do you believe -- do you have any</p> <p>3 information that regardless of what was written in the</p> <p>4 official policy that you promulgated for metering,</p> <p>5 that the Hidalgo Port of Entry was engaged in some</p> <p>6 form of informal turn-back action with respect to</p> <p>7 asylum seekers?</p> <p>8 A. I'm not sure I understand your question.</p> <p>9 Q. Sure. So you have your written policy?</p> <p>10 A. Right.</p> <p>11 Q. The metering policy?</p> <p>12 A. Right.</p> <p>13 Q. And you expected that policy to be</p> <p>14 followed?</p> <p>15 A. Correct.</p> <p>16 Q. And a good CBP officer should follow that</p> <p>17 order, correct?</p> <p>18 A. Correct.</p> <p>19 Q. Now, isn't it the case that there's</p> <p>20 basically two ways in which a policy can be</p> <p>21 disseminated to your front-line officers? There's</p> <p>22 written orders and musters, and then there's, you</p>	<p style="text-align: right;">Page 285</p> <p>1 Q. All right. And do your officers prevent --</p> <p>2 your officers at limit line prevent foreign nationals</p> <p>3 from entering the U.S. after -- for the purpose of</p> <p>4 preventing -- let me ask this question better because</p> <p>5 I just got tied up.</p> <p>6 Is one of the purposes of putting CBP</p> <p>7 officers at the limit line to stop asylum seekers from</p> <p>8 setting foot on U.S. soil?</p> <p>9 A. It is to control the access based on our</p> <p>10 capacity. In 2016 we did not set up at the limit</p> <p>11 line, and we ended up with unacceptable conditions at</p> <p>12 our ports of entry. So when we re-established the</p> <p>13 metering across the southwest border in response to</p> <p>14 this surge of migrants, we set up at the limit line so</p> <p>15 that the Mexicans -- those that are seeking entry when</p> <p>16 we were beyond capacity would return and wait in the</p> <p>17 shelters, as opposed to waiting outside the doors of</p> <p>18 the ports unprotected, without bathrooms, without</p> <p>19 food.</p> <p>20 We believed it was the more responsible</p> <p>21 thing to do, to ask them to return and wait in the</p> <p>22 shelters.</p>

<p style="text-align: right;">Page 286</p> <p>1 Q. Right.      2 A. Than wait in our courtyards where 2016 it      3 was creating unsafe conditions. It was -- there was      4 no shelter. The migrants are defecating all over the      5 port.      6 Q. Is it your belief that conditions in      7 Mexican border towns are safer than outside U.S. ports      8 of entry?      9 A. I'm sorry?      10 Q. Yeah. You said you wanted the migrants to      11 return to the shelters.      12 A. Right.      13 Q. Are those shelters safer than being outside      14 of the port of entry?      15 A. I believe those shelters provide shelter.      16 They provide security. They provide food. They      17 provide bathrooms.      18 When migrants are camped out in the      19 courtyards of the ports, they don't have shelter.      20 They don't have bathrooms. They don't have food. I      21 think it is better to have them wait in a shelter than      22 in a open courtyard exposed to the elements without</p>	<p style="text-align: right;">Page 288</p> <p>1 permits.      2 Q. And it's still your position -- so that I'm      3 clear on this, that it's safer to wait in a shelter on      4 the Mexican side of the border than it is to wait on      5 U.S. soil outside of the port of entry building?      6 A. Yes.      7 Q. Okay.      8 A. I believe it's better to be in a shelter      9 with food and security and bathrooms, than it is to be      10 exposed outdoors in the elements for days on end with      11 no shelter, no food, no bathrooms.      12 Q. Do you know if migrants on the Mexican side      13 of the border are exposed to the elements outside with      14 no access to food or shelter or -- and are in the      15 heat?      16 A. There are government-run shelters. There      17 are shelters run by private entities. And then there      18 are migrants that choose not to go to shelters for      19 whatever reason.      20 Q. There are migrants who sleep on the -- who      21 sleep outside the ports of entry, correct?      22 A. I would assume so.</p>
<p style="text-align: right;">Page 287</p> <p>1 food, without bathrooms.      2 Q. Would it surprise you to learn that      3 migrants in shelters on the Mexican side of the border      4 have been assaulted?      5 A. No.      6 Q. Would it surprise you to learn that      7 migrants in shelters on the Mexican border have been      8 murdered?      9 A. Migrants on the Mexican -- migrants being      10 murdered in Mexico.      11 Q. Correct.      12 A. I would not -- that's common. That's      13 understood.      14 Q. It's common, right?      15 A. It's common knowledge that -- yeah.      16 Q. And would it surprise you to learn that      17 migrants in the shelters on the Mexican side of the      18 border do not have easy access to food or employment?      19 A. I don't know that to be true.      20 Q. You don't know one way or the other?      21 A. I know the Mexican government has been      22 offering the migrants that are waiting with work</p>	<p style="text-align: right;">Page 289</p> <p>1 Q. And there are migrants who sleep outside in      2 100-degree weather, correct?      3 A. I would assume so.      4 Q. And do you think that's safer than being      5 outside the port?      6 A. I have a responsibility to create safe      7 working conditions for the traveling public and for      8 our officers in the ports of entry.      9 Q. And you are responsible --      10 A. Having migrant camps --      11 Q. -- stops at the border, right?      12 A. My responsibility starts at the border, the      13 board U.S. Border.      14 Q. Correct. So you don't view yourself as      15 having any responsibility to migrants who are in      16 shelters on the Mexican side?      17 A. No. Mexico is a sovereign country. They      18 have a responsibility to protect the people in their      19 borders, as I have the responsibility to police what      20 comes across our borders.      21 Q. Do you take any responsibility for what's      22 happened to Mexican -- to migrants who are living on</p>

<p style="text-align: right;">Page 290</p> <p>1 the Mexican side of the border due to the metering 2 policy? 3 A. Do I take -- 4 Q. Yeah. Do you take any responsibility for 5 that? 6 A. No. 7 Q. Okay. Do you sympathize with their 8 situation? 9 A. Yes. 10 Q. Do you -- do you wish those would be -- 11 those asylum seekers were in better conditions on the 12 Mexican side of the border? 13 A. I wish our immigration policy would be 14 fixed so that we wouldn't have to deal with these 15 issues. 16 Q. My question is, is it your desire that 17 those Mexicans can -- sorry, that those individuals in 18 Mexico due to the metering policy would be living in 19 better conditions? 20 A. That's Mexico's responsibility to provide 21 the conditions for the people in their borders. 22 Q. Okay. Mark the next exhibit.</p>	<p style="text-align: right;">Page 292</p> <p>1 go ahead. Show me the pictures from the river. 2 Q. Sure. Here you go. 3 - - - 4 (A document was marked as Deposition 5 Exhibit Number 51.) 6 - - - 7 BY MR. MEDLOCK: 8 Q. This is a picture taken of a father with 9 his less-than-two-year-old child in the river in the 10 Rio Grande. 11 MS. SHINNERS: Counsel, you are really just 12 berating the witness at this time. 13 MR. MEDLOCK: I'm not. I'm not. His name 14 was Oscar Alberto Martinez Ramirez. And his 15 daughter's name -- his daughter was less than two 16 years old. 17 These individuals were forced to wait in 18 matamoros and then try to cross the Rio Grande and 19 then drowned. Do you take any responsibility for 20 that? 21 A. No. 22 Q. Okay. You said there's a lawful way to</p>
<p style="text-align: right;">Page 291</p> <p>1 - - - 2 (A document was marked as Deposition 3 Exhibit Number 50.) 4 - - - 5 BY MR. MEDLOCK: 6 Q. Sir, this is a picture taken on August 2019 7 by an Associated Press reporter in Matamoros, Mexico, 8 of a migrant mother sleeping with her child outside of 9 a shelter because the shelter had lacked space. And 10 as you can see, the child is not even wearing any 11 pants. 12 Do you take any responsibility for this 13 happening? 14 A. No. 15 Q. Okay. Do you take any responsibility for 16 what occurs to asylum seekers who, when forced with 17 waiting in -- waiting for months in Mexico due to 18 metering decide to cross illegally between ports and 19 are harmed? Do you take any responsibility for that? 20 A. No. 21 Q. Okay. 22 A. There's a lawful way to enter. And I'll --</p>	<p style="text-align: right;">Page 293</p> <p>1 enter, correct? 2 A. Correct. 3 Q. Do you agree that migrants who are metered 4 to the port of entry are seeking to enter the U.S. 5 lawfully? 6 A. Through the port of entry, yes. 7 Q. Okay. Do you recall there being any follow 8 up to this e-mail from David Atkinson that we have 9 been looking at? 10 A. Follow up with Mr. Atkinson or -- 11 Q. No. With other people in leadership at 12 CBP? 13 A. I've discussed with Mr. Higgerson, the DFO, 14 about enhancing the security at the limit lines. 15 Q. Do you recall discussing anything else with 16 Mr. Higgerson? 17 A. I would need some more specifics. 18 Q. Sure. I'll mark the next exhibit. 19 - - - 20 (A document was marked as Deposition 21 Exhibit Number 52.) 22 - - -</p>

<p style="text-align: right;">Page 294</p> <p>1 BY MR. MEDLOCK:</p> <p>2 Q. All right. So I've marked as Exhibit 52 a</p> <p>3 multi-page e-mail that begins with AOL-DEF-00269970</p> <p>4 and goes to 71. This appears to be a continuation of</p> <p>5 the e-mail chain that began David Atkinson's e-mail;</p> <p>6 is that correct?</p> <p>7 A. Yes.</p> <p>8 Q. And it goes -- it all occurs on March 19,</p> <p>9 2019, correct?</p> <p>10 A. Yes.</p> <p>11 Q. And this -- these are e-mails that were</p> <p>12 sent between you and Kevin McAleenan and David</p> <p>13 Higgerson, correct?</p> <p>14 A. Yes.</p> <p>15 Q. And you would have received these e-mails</p> <p>16 in the course of your duties as CBP officer?</p> <p>17 A. Yes.</p> <p>18 Q. And you would have read and understood</p> <p>19 these e-mails at the time you received them?</p> <p>20 A. Yes.</p> <p>21 Q. And you would have received these e-mails</p> <p>22 on or about March 19, 2019?</p>	<p style="text-align: right;">Page 296</p> <p>1 A. Yes.</p> <p>2 Q. All right. Do you recall if there was any</p> <p>3 more to that e-mail chain?</p> <p>4 A. I don't recall, but again Mr. Atkinson</p> <p>5 files and writes on everything dealing with the ports.</p> <p>6 Q. Um-hmm. All right.</p> <p>7 - - -</p> <p>8 (A document was marked as Deposition</p> <p>9 Exhibit Number 53.)</p> <p>10 - - -</p> <p>11 BY MR. MEDLOCK:</p> <p>12 Q. All right. I've marked a document Exhibit</p> <p>13 53. It's again a multi-page e-mail chain with the</p> <p>14 Bates numbers AOL-DEF-00270451 through 452. This</p> <p>15 appears to be a continuation of the same e-mail chain,</p> <p>16 correct?</p> <p>17 A. Yes.</p> <p>18 Q. And again you would have sent and received</p> <p>19 these e-mails in the course of your duties at CBP on</p> <p>20 or about March 19, 2019?</p> <p>21 A. Correct.</p> <p>22 Q. And you would have read and understood them</p>
<p style="text-align: right;">Page 295</p> <p>1 A. Yes.</p> <p>2 Q. And these e-mails, other than some</p> <p>3 redactions to them, appear, to be full and correct</p> <p>4 copies of the e-mail chain?</p> <p>5 A. They appear to.</p> <p>6 Q. Okay. So Mr. McAleenan forwards on</p> <p>7 Mr. Atkinson's mail to you and writes, EAC, neither</p> <p>8 response coordinated with the front office and</p> <p>9 counsel, thank you, KM, correct?</p> <p>10 A. Correct.</p> <p>11 Q. And the EAC refers to you correct?</p> <p>12 A. Yes.</p> <p>13 Q. And you write back, Sir, will do?</p> <p>14 A. Yes.</p> <p>15 Q. And then it appears that Mr. Higgerson next</p> <p>16 wrote, "never stops," correct?</p> <p>17 A. Correct.</p> <p>18 Q. And then you wrote, "this guy, I tell you,</p> <p>19 I am tired. You must be exhausted," correct?</p> <p>20 A. Yes.</p> <p>21 Q. And you were writing that regarding David</p> <p>22 Atkinson, correct?</p>	<p style="text-align: right;">Page 297</p> <p>1 at that time?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And so it appears that after you</p> <p>4 wrote, "this guy, I tell you, I'm tired. You must be</p> <p>5 exhausted," Mr. Higgerson responded?</p> <p>6 A. Yes, he did.</p> <p>7 Q. And he wrote back, "Sadly, we have real</p> <p>8 work to do. This guy is not helping his folks."</p> <p>9 Did I read that correctly?</p> <p>10 A. Yes.</p> <p>11 Q. Do you understand what Mr. Higgerson meant</p> <p>12 by real work?</p> <p>13 A. We have a multitude of priorities within</p> <p>14 the port of entry. And now the senior leadership</p> <p>15 there, senior leadership within OFO is again having to</p> <p>16 take time out to address Mr. Atkinson's latest</p> <p>17 complaint.</p> <p>18 Q. Do you think that raising complaints about</p> <p>19 possible illegal conduct at a port of entry is not --</p> <p>20 does not constitute real work?</p> <p>21 A. Again, I disagree with his assessment that</p> <p>22 there's illegal activity going on in the port of</p>

<p style="text-align: right;">Page 298</p> <p>1 entry.</p> <p>2 Q. If someone believes that there is illegal</p> <p>3 conduct going on, don't they have a duty to report</p> <p>4 that up?</p> <p>5 A. As did Mr. Atkinson. And he chose to</p> <p>6 report it to the commissioner.</p> <p>7 Q. But not real work though that he reported</p> <p>8 it up? Having -- what do you take that to mean, that</p> <p>9 sadly we have real work to do?</p> <p>10 A. We have real work to do. We have real</p> <p>11 activities to be focused on, and here we are spending</p> <p>12 time discussing Mr. Atkinson's latest complaint.</p> <p>13 Q. Which you never investigated, correct?</p> <p>14 A. Which we -- no, that is not true. I did</p> <p>15 investigate, and we took actions against the officer</p> <p>16 safety issues that he outlines in the middle of his</p> <p>17 e-mail.</p> <p>18 Q. So you know for a fact that the first</p> <p>19 paragraph in his e-mail is not true?</p> <p>20 A. That he's requesting instructions?</p> <p>21 Q. Yeah.</p> <p>22 MS. SHINNERS: Objection. Asked and</p>	<p style="text-align: right;">Page 300</p> <p>1 Q. Do you think 187 people at a port of entry</p> <p>2 missed a muster about -- like that?</p> <p>3 A. I think the direction was clear. I think</p> <p>4 the officers didn't like that direction. And I think</p> <p>5 spun up by the union, 187 officers all signed their</p> <p>6 name to that document. That's what I think.</p> <p>7 Q. You think that they didn't like that</p> <p>8 direction?</p> <p>9 A. They didn't like being posted mid bridge.</p> <p>10 Q. They didn't like having to be posted mid</p> <p>11 bridge to meter a site?</p> <p>12 A. They didn't like being posted mid bridge</p> <p>13 exposed to the elements. And their primary complaints</p> <p>14 were about assigning more officers on overtime to do</p> <p>15 that.</p> <p>16 Q. Where in his e-mail did it say his primary</p> <p>17 complaint was about overtime?</p> <p>18 A. That has been his primary complaint dealing</p> <p>19 with the metering. This is not the only communication</p> <p>20 from Mr. Atkinson or from the union.</p> <p>21 Q. Right. But where did he say that his</p> <p>22 primary complaint in March 2019 was overtime?</p>
<p style="text-align: right;">Page 299</p> <p>1 answered.</p> <p>2 Q. I just want to make sure I understand that.</p> <p>3 You don't think that's true?</p> <p>4 A. That what, that he asked for instructions?</p> <p>5 Q. Yeah.</p> <p>6 A. He did ask for instruction.</p> <p>7 Q. Were they ever given to him?</p> <p>8 A. He received a copy of the April 2018</p> <p>9 metering memo.</p> <p>10 Q. And were further instructions or</p> <p>11 clarifications given to him?</p> <p>12 A. No. That memo was what was given to him.</p> <p>13 Q. So he would have already had -- known about</p> <p>14 that memorandum because it had been mustered to all of</p> <p>15 the CBP officers, first and second-level CBP officers</p> <p>16 at ports of entry, correct?</p> <p>17 A. I assume so, that he was present when it</p> <p>18 was mustered.</p> <p>19 Q. And the 187 individuals who signed his</p> <p>20 letter, that letter, would have also been present for</p> <p>21 that muster?</p> <p>22 A. Assuming.</p>	<p style="text-align: right;">Page 301</p> <p>1 A. It is not in this e-mail.</p> <p>2 Q. That's an assumption you are making, right?</p> <p>3 A. The other e-mail you provided from the same</p> <p>4 chapter talked about back pay compensation.</p> <p>5 Q. That's correct, but it also raised issues</p> <p>6 about the -- about the purported illegality of</p> <p>7 metering, correct?</p> <p>8 A. I don't believe the metering policy is</p> <p>9 illegal.</p> <p>10 Q. I understand that, but that's a concern</p> <p>11 that's raised in both of these e-mails.</p> <p>12 A. He raised that concern, yes, amongst</p> <p>13 others.</p> <p>14 Q. So he's been -- the union's been</p> <p>15 consistent, right? In 2017 they raised concerns about</p> <p>16 the legality of metering. And then 2019 they raised</p> <p>17 concerns about the legality of metering, correct?</p> <p>18 A. The Hidalgo chapter has been consistent.</p> <p>19 Q. Yes. That's correct.</p> <p>20 A. Yes. The other 12 chapters along the</p> <p>21 southern border have not raised those concerns,</p> <p>22 Q. Okay. So, but my question is there's been</p>

<p style="text-align: right;">Page 302</p> <p>1 a three-year period where they have been raising this      2 concern, but you say it's really just about back pay?      3 A. I'm saying that is driving a lot of their      4 concerns along with the security mid bridge.      5 Q. And you don't think that the legality is a      6 real concern of theirs at all?      7 A. No. I believe we are acting legally.      8 Q. You believe that their purported concerns      9 about the legality of metering is just a cover to get      10 some better conditions at the mid bridge and some back      11 pay, right?      12 A. I believe that is what is primarily driving      13 their concerns, yes.      14 Q. They don't actually state that in the      15 e-mails, correct?      16 A. Not in this e-mail that you showed me. No.      17 Q. And you never -- in either of them, right?      18 A. The other e-mail does talk about back pay      19 compensation.      20 Q. It does say that, but it doesn't say that's      21 their primary concern, does it?      22 A. No.</p>	<p style="text-align: right;">Page 304</p> <p>1 e-mails.      2 Q. So let's take -- do you still have William      3 Haralson's e-mail in front of you?      4 MS. SHINNERS: What's the exhibit number,      5 do you have it?      6 A. I have it, 46.      7 Q. 46. What are the first four words of the      8 body of that e-mail?      9 A. During the grievance meeting.      10 Q. Okay. So it was a grievance, wasn't it?      11 A. This message wasn't addressed to me.      12 Q. Right, but you had -- but you now know that      13 during grievance meetings, metering was discussed,      14 right?      15 A. Apparently during a grievance meeting at      16 the local level, the issue was discussed.      17 Q. And these concerns that were raised about      18 metering and grievance meetings weren't raised to your      19 level, were they?      20 A. What was raised in a grievance at these      21 local grievance meetings?      22 Q. Yeah.</p>
<p style="text-align: right;">Page 303</p> <p>1 Q. That's an assumption you are making,      2 correct?      3 A. Correct.      4 Q. Okay. So, and you've never actually talked      5 to William T. Haralson, have you?      6 A. No.      7 Q. You've never talked to David Atkinson, have      8 you?      9 A. Not on this matter.      10 Q. Not regarding metering?      11 A. Not regarding metering.      12 Q. You have talked to him about other matters?      13 A. Yes, at union president meetings.      14 Q. At those meetings did you ever tell him to      15 stop filing grievances?      16 A. No, I don't -- I don't ever told him to      17 stop filing grievances.      18 Q. Did you ever tell him you thought his      19 grievances had no factual basis?      20 A. No. I don't view their grievances.      21 Q. Well, you did get these?      22 A. These weren't grievances. These were</p>	<p style="text-align: right;">Page 305</p> <p>1 A. No.      2 Q. So, sir, were you -- and this is just a yes      3 or no. You were -- you understood that you were to      4 preserve documents related to this litigation?      5 A. Yes.      6 Q. And you have done so, right?      7 A. Yes, I have.      8 Q. And can you explain to me why we can't find      9 this e-mail, Exhibit 46, anywhere in David Higgerson's      10 files?      11 MS. SHINNERS: Objection. Foundation.      12 Q. Can you explain that to me?      13 MS. SHINNERS: Objection. Calls for      14 speculation.      15 Q. Okay. Would it surprise you that David      16 Higgerson appears to have deleted this e-mail?      17 A. I have no knowledge of how the records were      18 pulled or what Mr. Higgerson has done. I don't know.      19 MS. SHINNERS: For the record, defendants      20 have not completed their production from Custodian      21 Higgerson.      22 Q. Okay. That's fine. We have a lot of</p>

<p style="text-align: right;">Page 306</p> <p>1 documents from Mr. Higgerson from this time period, 2 but strangely but we don't have this e-mail. 3 Can you explain that for me? 4 A. I cannot. 5 Q. Okay. 6 MS. SHINNERS: I'm happy to discuss with 7 you the mechanics of how e-mails are retained at CBP 8 on a break. 9 MR. MEDLOCK: You can discuss whatever you 10 want with me during a break. 11 BY MR. MEDLOCK: 12 Q. Let's go back to the March 2019 e-mail from 13 Mr. Atkinson with the attachment of the To Whom It May 14 Concern letter. Do you see the sentence that begins 15 after their immediate request? 16 A. Which paragraph? 17 Q. I'm in the To Whom It May Concern Letter. 18 A. Oh. 19 Q. Sorry. It says, quote, After their 20 immediate request, we are instantly sending them back 21 to Mexico without date, time or appointment to be 22 allowed in the United States for processing. We are</p>	<p style="text-align: right;">Page 308</p> <p>1 Q. Yes. 2 A. Yes. That I'm aware of. 3 Q. Okay. Are you aware of any -- yes or no -- 4 aware of any guidance that was issued -- 5 A. Yes. 6 Q. -- to implement that? 7 A. Yes. 8 Q. In implementing that guidance, what are CBP 9 officers supposed to do? 10 A. If the individual who approaches the 11 officers indicates that they are part of the Al Otro 12 Lado, I think it was the Al Otro Lado part of that 13 case, they are to tell us that so we can notate it in 14 the file. So that when their case goes to CIS, CIS 15 can then consider that as they adjudicate the claim. 16 Q. And when you say there are these questions 17 that are asked, is that asked at primary or secondary, 18 to your knowledge? 19 A. To my knowledge, it would be after we had 20 the capacity to receive them and began their 21 processing as part of the sworn statement process. 22 Q. Okay. So this would be part of the</p>
<p style="text-align: right;">Page 307</p> <p>1 not aware of any process used to inform these asylum 2 seekers to return to the port for processing into the 3 U.S. and feel there is need for clarification for the 4 authority or law allowing us to immediately deny entry 5 to these asylum seekers into the United States and 6 returning them back to Mexico. 7 Did I read that correctly? 8 A. Yes. 9 Q. Did it cause you any concern that 187 10 officers believed that they needed further guidance 11 about what the -- about the metering policy? 12 A. No. 13 Q. Okay. Sir, are you aware that there was a 14 preliminary injunction granted in this case? 15 A. I'm not sure. 16 Q. Okay. Were you aware that there was a 17 preliminary injunction issued by the court that 18 prevented some individuals without proper travel 19 documents from being denied entry to the United States 20 based on the -- their having transited another 21 country? 22 A. Yes. Recently?</p>	<p style="text-align: right;">Page 309</p> <p>1 credible fear interview? 2 A. Well, we don't do the credible fear 3 interview. 4 Q. Right. That's what I'm trying to 5 understand. 6 A. No. When they come across and we start the 7 processing, so again if we were beyond capacity, they 8 wouldn't come into the port. If we had capacity and 9 we started their credible fear claim, where we take 10 the sworn statement, my understanding is it would be 11 asked as part of that. And the file would be notated 12 as it then moved through the immigration process. 13 Q. Do you, to your knowledge, do CBP officers 14 do anything to investigate whether individuals that 15 claim to be part of the Al Otro Lado preliminary 16 injunction -- do you anything to investigate whether 17 they are on any sort of wait list on the Mexican side? 18 A. No. 19 Q. As a part of implementing that preliminary 20 injunction, are you aware of any efforts by CBP to get 21 a copy of those wait lists on the Mexican side? 22 A. I'm not aware of those activities, but I</p>

<p style="text-align: right;">Page 310</p> <p>1 know there's discussions on moving forward with what 2 was ordered by the courts.</p> <p>3 Q. Okay.</p> <p>4 A. Again, this was just within the last week 5 or so, so --</p> <p>6 Q. Right. I'm just trying to understand 7 what's going on. So what's happening in those sworn 8 statements essentially is that the officer is asking a 9 few extra questions to determine whether the person 10 fits into the Al Otro Lado injunction; is that right?</p> <p>11 A. I don't know.</p> <p>12 Q. Okay. Do you know who would know the 13 answer to that question at CBP?</p> <p>14 A. That would have come out from again our 15 executive director for passenger -- for admissibility, 16 Todd Hoffman.</p> <p>17 Q. Yeah?</p> <p>18 A. Yeah.</p> <p>19 Q. Okay. When did you learn of the 20 injunction?</p> <p>21 A. I don't recall. Within the last week or 22 so.</p>	<p style="text-align: right;">Page 312</p> <p>1 A. As far as I can recall. I don't have the 2 exact date.</p> <p>3 Q. So best recollection would be Friday the 4 6th or Monday the 9th?</p> <p>5 A. Best recollection maybe a little before the 6 6th. I'm trying to think with the Thanksgiving, it 7 was -- it was within the last, you know, 10 days 8 maybe.</p> <p>9 MR. MEDLOCK: Okay. All right. I have no 10 further questions at this time, sir.</p> <p>11 THE WITNESS: Okay. Thank you.</p> <p>12 MS. SHINNERS: Defendant's counsel would 13 like to do redirect. We'll take a quick break.</p> <p>14 - - -</p> <p>15 (Recessed at 4:10 p.m.)</p> <p>16 (Reconvened at 4:20 p.m.)</p> <p>17 - - -</p> <p>18 EXAMINATION CONDUCTED BY MS. SHINNERS:</p> <p>19 Q. Mr. Owen, I'd like to ask you if -- to the 20 extent of your recollection, if you could explain to 21 me the sequence of events in 2016 in San Ysidro in</p>
<p style="text-align: right;">Page 311</p> <p>1 Q. Was it before or after Thanksgiving?</p> <p>2 A. I don't recall.</p> <p>3 Q. Okay. Let me pause here.</p> <p>4 - - -</p> <p>5 (Recessed at 3:59 p.m.)</p> <p>6 (Reconvened at 4:09 p.m.)</p> <p>7 - - -</p> <p>8 BY MR. MEDLOCK:</p> <p>9 Q. Sir, thank you for indulging me. You 10 mentioned that there was guidance that would have been 11 sent by Todd Hoffman regarding the preliminary 12 injunction in this case?</p> <p>13 A. Yes.</p> <p>14 Q. Do you know when that guidance was sent 15 out?</p> <p>16 A. Within a few days ago.</p> <p>17 Q. Few days being how many?</p> <p>18 A. What is today, the 13th.</p> <p>19 Q. Yeah.</p> <p>20 A. Maybe the start of this week, the end of 21 last week.</p> <p>22 Q. So possible --</p>	<p style="text-align: right;">Page 313</p> <p>1 terms of accommodations that were made at the San 2 Ysidro port with respect to the Haitian migrant surge?</p> <p>3 MR. LEV: Objection. Vague. I don't know 4 what accommodations means.</p> <p>5 Q. Do you understand my question?</p> <p>6 A. I can talk about what processes we 7 implemented to address the Haitians.</p> <p>8 Q. That's fine.</p> <p>9 A. Okay. So, to put this in context, the 10 migrants have undergone waves as they have come into 11 the United States. In 2014, it was unaccompanied 12 alien children. They were primarily entering between 13 the ports, which is a border responsibility. It was 14 not an OFO issue.</p> <p>15 So we really did not start to engage with 16 the high numbers of migrants until 2016. So that 17 started in the early part of 2016 with the Haitians 18 that were leaving Brazil. Historically, the 19 earthquake Haiti, destruction in Haiti. Brazil opened 20 their doors to the Haitians. They needed cheap labor 21 to build the venues for the Olympics.</p> <p>22 By 2015, those venues were built. They</p>

<p style="text-align: right;">Page 314</p> <p>1        canceled all of the Haitian work permits and directed 2        the Haitians to leave. The Haitians did not go back 3        to Haiti because Haiti was still in bad shape. They 4        came up through the southern border and arrived in San 5        Ysidro.</p> <p>6           So at the start of 2006 is when we started 7        to sea all of these Haitians, which quickly began to 8        overwhelm our detention and processing capabilities. 9        The entire system was overwhelmed with the Haitians. 10      ERO, who would remove the Haitians from our temporary 11     detention, put them into permanent detention where it 12     was also overwhelmed. So this is what started the 13     metering.</p> <p>14        So we needed to control the flow, because 15      we simply had no more processing or holding capacity. 16      What we did throughout 2016, and this started to 17      spread with the Haitians as they went east into 18      Calexico, into San Luis, Arizona, into Nogales, 19      because this was our first dealing with such large 20      numbers, we would start to convert conference space, 21      training facilities room like this into temporary 22      holding facilities.</p>	<p style="text-align: right;">Page 316</p> <p>1        holding people. And I really believed that in 2016, 2        we got lucky when we had so many people in our 3        facilities, that there was not a fire, that there was 4        not acts of violence, that there was not disease that 5        would spread through the community.</p> <p>6           So when '17 came along and we assessed 7        that, we said we would not do that again. We would 8        only hold to what we had the physical capacity and the 9        operational capacity to do. When 2018 came along and 10      the migrant numbers again started to increase, that's 11      when we decided operationally to hold at the limit 12      line to have folks remain in Mexico as opposed to in 13      our non-official detention space, you know, creating 14      unsafe conditions, not allowing people to remain at 15      the corridors in the open areas of the ports waiting 16      to be processed.</p> <p>17        So that is why we switched from holding at 18      the doors of the port to holding at the limit line '16 19      versus '18.</p> <p>20        Q.    Okay. A couple times in your response you 21      mentioned in 2006. Were you referring to 2016?</p> <p>22        A.    Oh, 2016. Yes. Sorry.</p>
<p style="text-align: right;">Page 315</p> <p>1        So they were not designed for holing 2        individuals in detention, but because the numbers were 3        so overwhelming us, we would convert space like this. 4        And we had way too many people beyond our official 5        detention capacity. Throughout 2006, the numbers 6        started to increase across the entire southwest 7        border, not just San Diego.</p> <p>8        And then they started becoming not just 9        Haitians, but more family units as they were coming in 10      through out 2016, which is why we then rolled out the 11      metering across the southern border where it was 12      needed operationally. We employed the same tactics at 13      those ports that we would convert conference space and 14      wherever we could make space to hold people.</p> <p>15        Again ERO who is supposed to take them from 16      our temporary storage, temporary detention space to 17      the permanent detention facilities to was overwhelmed 18      as well.</p> <p>19        2017 came along, and the numbers came down 20      to more manageable levels. We had less metering at 21      that time. And we assessed what we did in '16 in 22      terms of converting conference space and such into</p>	<p style="text-align: right;">Page 317</p> <p>1        Q.    You also mentioned that -- I believe you 2        mentioned that ports of entry were receiving family 3        units.</p> <p>4        Can you explain the impact, if any, of 5        receiving more family units through ports of entry, of 6        the receipt of more family units in ports of entry on 7        the capacity of the port of entry?</p> <p>8        A.    Yes. ports of entry are not designed for 9        long-term holdings. Our detention cells are like jail 10      cells in a police station. They are intended for 11      short-term detention, primarily of single adults, 12      while we are waiting to turn them over to another 13      agency or to, you know, immigration and customs 14      enforcement, whatnot.</p> <p>15        So as the composition of the migrants 16      started to change throughout 2016 and we started to 17      receive more and more family units, our space is not 18      designed for family units. You look at a lot of our 19      ports, the cells are very small. Some are what we 20      call wet cells, meaning they have toilets. Some are 21      not.</p> <p>22        So the increase in family units further</p>

<p style="text-align: right;">Page 318</p> <p>1 taxed our abilities to bring in large numbers of folks      2 and hold them, because our cells were simply not      3 designed to do that. We talked about the physical      4 capacity and the operational capacity. If you take a      5 place like Hidalgo that has four cells designed to      6 hold 42 people, but only 3 of those cells has      7 bathrooms. Okay. So that is our total physical      8 capacity of 42.</p> <p>9 When you start to factor in the operational      10 considerations, the demographics of who has come      11 across and filed a claim today. Right? So if you      12 have a family unit, you have to put them in one cell.      13 Another family unit comes in and they have scabies or      14 lice. You can't put them in with the first family.      15 You Would put them into a second cell.</p> <p>16 If you had an adult male, he would not go      17 in with the families and the children. He would go      18 into a different cell. If you -- we have to separate      19 individuals from different countries with different      20 gang affiliations as notated through their tattoos,      21 because they will not -- there will be trouble in the      22 cells. So you have to separate those.</p>	<p style="text-align: right;">Page 320</p> <p>1 A. Okay.      2 Q. So can you explain, based on your knowledge      3 and your experience, in general any impacts on trade      4 and travel from -- if you divert resources, or if a      5 port of entry diverts resources from the facilitation      6 of trade or travel?</p> <p>7 MR. LEV: Same objection.</p> <p>8 A. Okay. From my knowledge, we prioritize our      9 mission sets within the ports of entry along the      10 guidance that we receive from the secretary. So if we      11 had to divert officers from the counter-terrorism      12 mission, or if we had to divert officers to put more      13 officers towards the processing of undocumented      14 migrants, we would not pull them from the      15 counter-terrorism mission. We would not pull them      16 from the narcotics intradiction mission.</p> <p>17 So the two missions that they would be      18 pulled from, one would be the facilitation of lawful      19 trade and travel. So those are folks who have lawful      20 documents to enter the country. Most of the      21 cross-border traffic on the southern border comes and      22 goes with border crossing cards.</p>
<p style="text-align: right;">Page 319</p> <p>1 Anybody that we arrest, and we make 40,000      2 arrests a year, they go into a cell separate from the      3 migrants. The migrants are here for an administrative      4 matter, if you will. Anyone that we arrest for a      5 criminal matter goes into a separate cell by      6 themselves. So you may have a physical capacity of      7 42, but in this example you actually only have 7      8 people in your cells, and you are a full capacity.</p> <p>9 Q. Thank you. Can you explain what impacts      10 there might be on trade and travel, in general, at any      11 port of entry, if resources are diverted from      12 facilitating trade and travel?</p> <p>13 A. Okay.</p> <p>14 MR. LEV: Objection. Calls for      15 speculation.</p> <p>16 A. I do understand.</p> <p>17 Q. Just to clarify, I'm asking can you explain      18 to your knowledge --</p> <p>19 A. This is confusing with you objecting. Do I      20 look at you or do I look at her. Can I answer?</p> <p>21 Q. You may answer, but I'm going to go ahead      22 and rephrase.</p>	<p style="text-align: right;">Page 321</p> <p>1 We would reduce travel lanes so you would      2 have fewer booths open. This would impact the      3 business community as they crossed. This would impact      4 the school kids that cross every day. This would      5 impact the people coming for medical treatments, to do      6 their business, to do their shopping. It Would result      7 in longer wait times to cross the border if we pulled      8 individuals from that mission set.</p> <p>9 If we pulled officers from the processing      10 cargo mission set, your summer produce would be      11 delayed. All of your cargo processing would be      12 delayed. In the summer -- the spring and summer of      13 2019, when we reassigned 731 officers from field      14 operations from the ports of entry to assist the      15 border patrol because of the migrant crisis that they      16 were facing at that time, we saw cargo wait times in      17 places like El Paso and San Ysidro go up from 45      18 minutes to over five hours.</p> <p>19 Those are the types of real impacts that      20 we would experience if we diverted more resources away      21 from the trade and travel mission, from the economic      22 security mission to put towards the migrant</p>

<p style="text-align: right;">Page 322</p> <p>1 processing.</p> <p>2 MS. SHINNERS: All right. Mr. Owen, thank</p> <p>3 you. I don't have any questions. I don't have</p> <p>4 further questions for Mr. Owen.</p> <p>5 MR. LEV: Can we take two minutes.</p> <p>6 - - -</p> <p>7 (Recessed at 4:30 p.m.)</p> <p>8 (Reconvened at 4:35 p.m.)</p> <p>9 - - -</p> <p>10 EXAMINATION CONDUCTED</p> <p>11 BY MR. LEV:</p> <p>12 Q. I just have a few more questions for you.</p> <p>13 A. Yes, sir.</p> <p>14 Q. You just testified that in 2017 you</p> <p>15 assessed what you did in 2016 in terms of converting</p> <p>16 conference spaces and other rooms into holding</p> <p>17 facilities and determined that you wouldn't do that</p> <p>18 again.</p> <p>19 A. Yes.</p> <p>20 Q. Who conducted that assessment?</p> <p>21 A. We did internally, just with our leadership</p> <p>22 at the ports. It was not a formal report or anything</p>	<p style="text-align: right;">Page 324</p> <p>1 A. We decided the informal discussions -- and</p> <p>2 it's not that it occurred, you know, at one meeting.</p> <p>3 It was kind of ongoing discussions throughout 2017 as</p> <p>4 we were no longer faced with the migrant numbers that</p> <p>5 we were faced with in '16.</p> <p>6 It was through those discussions that we</p> <p>7 felt very fortunate that nothing terrible happened</p> <p>8 based on creating space that was not designed to hold</p> <p>9 people.</p> <p>10 Q. And did you rely on any documentation, data</p> <p>11 in reaching these conclusions?</p> <p>12 A. We relied on our knowledge of what was a</p> <p>13 safe condition to hold people in and not.</p> <p>14 Q. You talked a little bit earlier with</p> <p>15 Mr. Medlock about the MCAT reports?</p> <p>16 A. Yes.</p> <p>17 Q. Did you undertake any activity to ascertain</p> <p>18 whether the metering guidance you issued was being</p> <p>19 implemented in a manner that was solely tied to</p> <p>20 operational capacity at specific ports of entry?</p> <p>21 A. I'm not sure I understand the question.</p> <p>22 Q. The metering guidance, I believe you</p>
<p style="text-align: right;">Page 323</p> <p>1 like that. When we did just an after action amongst</p> <p>2 ourselves talking of what we did right and what was</p> <p>3 concerning to us, converting and holding people in</p> <p>4 space that's not designed for that, we decided that</p> <p>5 was not the safest thing that we should have done.</p> <p>6 Q. Was that assessment memorialized in any</p> <p>7 writing?</p> <p>8 A. No. It was just discussions between the</p> <p>9 leadership within field operations.</p> <p>10 Q. Who was part of those discussions?</p> <p>11 A. Myself and the four southwest border DFOs,</p> <p>12 directors.</p> <p>13 Q. And who were those four southwest --</p> <p>14 A. It would be Pete Flores, Will Brooks,</p> <p>15 Hector Mancha, and David Higgerson.</p> <p>16 Q. So the five of you had an after-action</p> <p>17 report discussion about -- let me finish my question.</p> <p>18 You had an after-action report discussion about how</p> <p>19 you handled this major migrant surge in 2016, and</p> <p>20 based on that informal discussion with the five of</p> <p>21 you, you decided that it wasn't handled appropriately;</p> <p>22 is that correct?</p>	<p style="text-align: right;">Page 325</p> <p>1 testified provided discretion to the port directors to</p> <p>2 implement it as they deemed appropriate based on</p> <p>3 capacity concerns, correct?</p> <p>4 A. Correct.</p> <p>5 Q. An individual port director might exercise</p> <p>6 that discretion appropriately by limiting -- what you</p> <p>7 would view I believe as appropriately by metering</p> <p>8 migrants because the port was truly at its operational</p> <p>9 capacity limit?</p> <p>10 A. Correct.</p> <p>11 Q. A port director might exercise that</p> <p>12 discretion inappropriately by limiting migrants more</p> <p>13 than is necessary due to capacity constraints at a</p> <p>14 port, correct?</p> <p>15 A. Understood.</p> <p>16 Q. Did you ever undertake any sort of</p> <p>17 oversight or analysis to ascertain whether port</p> <p>18 directors were implementing the guidance in the first</p> <p>19 form and not in the second form that I just discussed?</p> <p>20 A. Not at my level. The four directors of</p> <p>21 field operations have that responsibility to directly</p> <p>22 oversee the day-to-day operations at their ports. It</p>

<p style="text-align: right;">Page 326</p> <p>1 was my clear expectation to them that folks were 2 knowledgeable with the direction and were carrying it 3 out appropriately.</p> <p>4 If we became aware of instances when that 5 was not done, that was to be referred to the JIC 6 again, the Joint Intake Center, to Office of 7 Professional Responsibilities.</p> <p>8 Q. Are you aware of instances such as that 9 being referred to the JIC?</p> <p>10 A. Of?</p> <p>11 Q. Of ports implementing metering beyond the 12 extent due to their capacity constraints?</p> <p>13 A. I am not. I am aware of individual actions 14 where individuals who are already in the U.S. were 15 sent back, and those were reported.</p> <p>16 Q. And I take it from your testimony that 17 beyond the ordinary expectations that supervisors 18 oversee their subordinates, there was no organized 19 effort undertaken to ensure that the metering guidance 20 was being implemented in the way that you intended, 21 and would only limit asylum applicants based on actual 22 capacity constraints?</p>	<p style="text-align: right;">Page 328</p> <p>1 portions would be designated confidential. 2 And defendants are making note of their 3 intent to claw back the exhibit that was briefly 4 marked as 44. I'm not sure if -- it's not in the 5 pile, but it's AOL-DEF-00723887. And we will follow 6 up for this and other claw backs with the formal 7 claw-back assertion. We just wanted to make sure that 8 we put those on the record today. 9</p> <p>10 - - - 11 (The deposition was concluded at 4:41 p.m.) 12 (Reading and signature not being waived.) 13 - - 14 15 16 17 18 19 20 21 22</p>
<p style="text-align: right;">Page 327</p> <p>1 A. There was no activity to such directed from 2 headquarters. I don't know if individual field 3 directors took any such assessment.</p> <p>4 Q. Are you aware of any such assessment?</p> <p>5 A. I am not.</p> <p>6 Q. Would you expect your individual field 7 directors to let you know if they had done so?</p> <p>8 A. Not necessarily.</p> <p>9 MR. LEV: I don't think we have anything 10 else. We are going to keep the deposition open as we 11 previously indicated, based on various documents that 12 have been clawed back and that we need to ascertain 13 whether they were appropriately clawed back or whether 14 we want to ask further questions about them.</p> <p>15 MS. SHINNERS: Okay. Any other basis for 16 keeping the deposition open?</p> <p>17 MR. LEV: I don't think so.</p> <p>18 MS. SHINNERS: Okay. And, for the record, 19 the witness -- I would like to request that the 20 witness be able to read and sign the deposition. We 21 would like to designate the transcript confidential 22 for the 30-day period while we determine which</p>	<p style="text-align: right;">Page 329</p> <p>1 UNITED STATES OF AMERICA ) 2 ss: 3 DISTRICT OF COLUMBIA ) 4 5 I, TODD OWEN, the witness herein, having 6 read the foregoing testimony of the pages of this 7 deposition do hereby certify it to be a true and 8 correct transcript, subject to the corrections, if 9 any, shown on the attached page. 10 - - - 11 12 13 _____ 14 TODD OWEN 15 16 Subscribed and sworn to before me 17 this _____ day of _____, 20_____. 18 19 _____ 20 SIGNATURE 21 22</p>

Page 330		Page 332			
	C E R T I F I C A T E	E R R A T A S H E E T			
1	UNITED STATES OF AMERICA )	1	PAGE	LINE #	
2	ss:	2	CORRECTION AND REASON		
3	DISTRICT OF COLUMBIA )	3	-----	-----	
4	I, ELIZABETH MINGIONE, Registered	4	-----	-----	
5	Professional Reporter and Notary Public within and for	5	-----	-----	
6	the District of Columbia, do hereby certify:	6	-----	-----	
7		7	-----	-----	
8	That the witness whose testimony appears in	8	-----	-----	
9	the foregoing deposition was duly sworn, and that the	9	-----	-----	
10	within transcript is a true record of the testimony	10	-----	-----	
11	given by such witness.	11	-----	-----	
12	I further certify that I am not related to	12	-----	-----	
13	any of the parties to this action by blood or	13	-----	-----	
14	marriage, and that I am in no way interested in the	14	-----	-----	
15	outcome of this matter.	15	-----	-----	
16	IN WITNESS WHEREOF, I have hereunto set my	16	-----	-----	
17	hand this _____ day of _____, 20_____.	17	-----	-----	
18		18	-----	-----	
19		19	-----	-----	
20	My Commission Expires:	20	-----	-----	
21	June 14, 2020	21	WITNESS SIGNATURE	DATE	
22		22			
Page 331					
1	ERRATA SHEET INSTRUCTIONS				
2	WITNESS: It is your right to read your deposition and				
3	make any changes in form or substance. Note the				
4	reason for any changes directly on the errata sheet.				
5	Please sign and date the errata sheet and your				
6	deposition in the spaces provided. You are signing				
7	this transcript subject to the changes you have made				
8	on the errata sheet. Unless otherwise agreed to by				
9	counsel to this deposition, you must sign before a				
10	notary public.				
11	Return the original errata sheet and signature				
12	page to the depoing attorney (attorney asking				
13	questions) promptly! Court rules require completion				
14	of this process within 30 days after receipt of the				
15	transcript or signature is deemed waived.				
16	DEPOSING ATTORNEY: Upon receipt of the signed errata				
17	sheet and signature page, please distribute copies to				
18	all parties in attendance and place the original				
19	signed pages in the original transcript.				
20	If you do not receive the signed errata sheet and				
21	signature page within 30 days after receipt of the				
22	transcript, you may assume signature is waived.				

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FOR THE NINTH CIRCUIT**

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